

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**December 16, 1999**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, December 16, 1999 at 10:00 a.m. in the Planning Department Conference Room, 10<sup>th</sup> Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; James Barfield; Chris Carraher; Bud Hentzen; Bill Johnson; Richard Lopez; Ron Marnell; John W. McKay, Jr.; Jerry Michaelis; Susan Osborne-Howes; George Platt; Harold Warner; Ray Warren; and Deanna Wheeler. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Lisa Verts, Senior Planner, Scott Knebel, Senior Planner, and Karen Wolf, Recording Secretary.

**FRANK GAROFALO**, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

-----

1. **Approval of the minutes of the Metropolitan Area Planning Commission meetings of September 30, 1999 and October 14, 1999.**

**MOTION:** That the Planning Commission approve the minutes for the September 30, 1999 and October 14, 1999 meetings as submitted.

**MCKAY** moved, **LOPEZ** seconded the motion, and it carried unanimously (9-0).

2. **Subdivision Committee items 2/4 and 2/9, 2/10, 2/11, and 2/12** were approved subject to the Subdivision Committee recommendations.

**MCKAY** moved, **WHEELER** seconded the motion, and it carried unanimously (11-0).

-----

2/1. **S/D 95-56** – Final Plat of BATHROP FOURTH ADDITION (FORMERLY CLARK ADDITION), located north of Central, on the west side of K-96.

A. As this site is adjacent to Wichita's city limits, the applicant shall submit a request for annexation. If the Applicant chooses to complete the plat prior to annexation, both City and County consideration is needed and the County Commissioner signature block will be required.

B. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. This guarantee shall be with the County for service through the Four Mile Creek sanitary sewer system. On the final plat tracing, appropriate wording shall be added to the Mayor's signature block indicating the City's agreement to allow a County sewer district to be formed within the City. County Engineering requests a sanitary sewer layout.

- C. The applicant shall guarantee the extension of City water to serve the lots being platted.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. City Engineering needs to comment on the status of the applicant's drainage plan. City Engineering has approved the drainage plan. A drainage guarantee and an off-site drainage agreement is required.
- F. The applicant shall provide a guarantee for the paving of the interior streets. This guarantee shall also provide for a sidewalk along one side of the looped street (Tipperary/White Tail/Bracken) and the related street connections (Woodridge and Tipperary).
- G. City Fire Department needs to comment on the need for an emergency access easement to provide for two points of access to this site. City Fire Department has limited development to 1600 feet from the closest intersection in the Balthop Addition until an emergency access easement is installed.
- H. City Fire Department needs to indicate if the street names being platted are appropriate. The street names are acceptable.
- I. Lots 21-24 exceed the maximum depth to width ratio of 2.5 to 1 and a modification will need to be granted. The Subdivision Committee has approved the modification.
- J. To allow for County Surveyor approval, the appropriate signature block needs to be added.
- K. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.

The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

**GAROFALO** "It is requested that this item be deferred. Is there someone here to speak on this item?"

**KROUT** "It is the final plat of the Balthop Fourth Addition, is there anyone here to speak on it?"

**GARY WILEY** "Mr. Chair, Commissioners, we would just like to defer this to the January 13<sup>th</sup> meeting so we can get some emergency access easements worked out."

**GAROFALO** "Are there any questions?"

**MOTION:** That the item be deferred to the January 13 meeting.

**GAROFALO** moved, **MCKAY** seconded the motion, and it carried unanimously (9-0).

---

- 2/2. S/D 99-70** – One-Step final plat of STONEBOROUGH SECOND ADDITION, located on the west side of Broadway, north of 55<sup>th</sup> Street South.
- A. Existing municipal services are available to serve this site. City Engineering needs to verify if any guarantees are required. No guarantees are required.
  - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
  - C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A private storm sewer extension is required at the time of site development.
  - D. Traffic Engineering needs to comment on the access controls. The plat proposes three access openings along Broadway, including one joint access. Distances should be shown for all segments of access control. Traffic Engineering has approved one access opening per lot. The Subdivision Committee has approved the plat with two openings subject to concurrence by KDOT.
  - E. The MAPC signature block should be revised to reference "Francis S. Garofalo" as the MAPC Chairman.
  - F. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
  - G. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
  - H. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
  - I. The dimension along the north line of the plat needs to be revised to correspond with the legal description.
  - J. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
  - K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
  - L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
  - M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
  - N. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
  - O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
  - P. Perimeter closure computations shall be submitted with the final plat tracing.
  - Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.

- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.

The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

**STRAHL** "As you may recall, this plat is subject to a 1977 agreement between the City of Wichita and KDOT, whereby the City agreed not to permit any additional openings on this portion of Broadway. The City requested an exception from KDOT from this agreement to allow for one opening per lot. The action of the Subdivision Committee was to approve this plat, subject to concurrence by KDOT of the one opening per lot.

The action of the planning Commission at the last meeting was to defer this plat until response was received from KDOT regarding their position on the access openings. As of today, we have not received response from KDOT. Staff has been advised from the City Law Department that we should proceed today with consideration of the plat and the City should not be bound by any future approvals or disapprovals by KDOT regarding access to this plat.

Upon further review, both MAPD and City Engineering request the approval of this plat, subject to the following:

Two openings would be permitted, one access opening along the north property line to allow for possible shared access with the property to the north and one opening on the south lot across the street from the existing opening there. Also, the dedication of an additional 10 feet of right-of-way along Broadway. This is needed to the existing roadway configuration whereby the center line of Broadway is offset 20 feet from the center line of the paving. Are there any questions of staff?"

**GAROFALO** "Neil, what happens if KDOT comes back and doesn't like this?"

**MCKAY** "He just said that the Law Department said we didn't have to pay any attention to them."

**GAROFALO** "Okay, we will let the Law Department take care of it."

**STRAHL** "They suggested that we proceed."

**GAROFALO** "What is the pleasure?"

**MCKAY** "I would like to hear the applicant's response."

**GAROFALO** "Okay, let's hear from the applicant."

**SAVOY** "I am with Savoy, Ruggles, and Bohm, representing the applicant. We are in agreement with the recommended access controls as stated by Neil, and we are in agreement with the dedication with an additional 10-foot of street right-of-way."

**GAROFALO** "Are there any questions? Thanks, Mark."

**MOTION:** That the Planning Commission recommend to the governing body that this request be approved.

**MCKAY** moved, **WHEELER** seconded the motion, and it carried unanimously (9-0).

-----

**2/3. S/D 99-65** – Final Plat of NORTH VALLEY FARMS ADDITION, located on the east and west sides of Meridian, north of 117<sup>th</sup> Street North.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Health Department should comment on the buildable area for Lots 1 through 6, Block 3, which contain a floodplain reserve. Health Department has requested a plot plan to insure sufficient area for installation of sewage lagoons. Approval of groundwater testing is also required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage concept. A flood study is required including a HEC-2 run. A drainage easement is requested along the south line of Lot 6.
- D. County Fire should comment on the plat's street names. The street names are approved.
- E. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the

easements.

- F. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- G. Lots 1 through 6, Block 3 exceed the maximum lot width to lot depth ratio of 2.5 to 1. A modification will need to be approved. The Subdivision Committee has approved a modification.
- H. The MAPC Chair should be revised to reference "Francis S. Garofalo".
- I. County Fire should comment on the street length. The 1950-ft length of the interior streets exceeds the 1200-ft maximum street length imposed by the Subdivision Regulations. The street length has been approved.
- J. The applicant shall guarantee the installation of the interior streets to the suburban street standard. This guarantee shall include the installation of temporary cul-de-sacs for the termination of the streets.
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. Bearings, distances and recording information need to be added for the pipeline easements on Lots 2 and 3, Block 2; Lot 3, Block 4; Lot 1, Block 2; and Lot 1, Block 4.
- M. The easement located in Lot 1, Block 1, and Lot 1, Block 5 needs to be labeled and dimensioned.
- N. Dimensions need to be added for the north lines of Lots 1 and 2, Block 5.
- O. Dimensions need to be added for the south lines of Lots 1 and 2, Block 1.
- P. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Y. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

**NEIL STRAHL**, Planning staff "This item is North Valley Farms, located on the east and west sides Meridian, north of 117<sup>th</sup> Street North. This plat is located in the County, and was approved by the Subdivision Committee at our last meeting. It is located within the 100-year flood plain and lots along the eastern portion of the plat are encumbered by the flood plain and we need the Health Department to receive a site plan to ensure that there is additional area for installation of the sewage lagoons. Other than that, I believe all of the other issues have been resolved. County Engineering did approve the drainage plan and

County Fire approved street names and a modification was approved by the Subdivision Committee for the lot depth/width ratio with 2-1/2 to 1 being exceeded by the lots along the eastern portion of the plat. Are there any questions for staff?"

**MARNELL** "Is this falling in the flood plain?"

**STRAHL** "Yes, the eastern portion."

**MARNELL** "What provisions to alleviate that in regard to building have been made?"

**STRAHL** "They have platted for minimum building pads, actually for all of the lots, and the little chart down here which would set the minimum floor level for new construction. There is also a flood study that is being done to be submitted to County Engineering as reflected in Item C."

**MARNELL** "So do I understand that to mean that the construction itself on any of this land will be above the 100-year flood plain?"

**STRAHL** "After construction, yes."

**MARNELL** "Are there any other questions of Neil? Okay. Is the applicant here?"

**MARK SAVOY** "I am with Savoy, Ruggles and Bohm. We are in agreement with staff comments."

**GAROFALO** "Are there any questions?"

**MCKAY** "I would like to hear from the Health Department on the concerns of water and stuff."

**RACHELLE MEYERES** "Good morning. I am with Wichita/Sedgwick County Health Department. I spoke with Jack Brown this morning about this issue. We are working with the applicant and the engineering firm on hydrology tests with the geologists. These are for quantity of the aquifer that they will be withdrawing from, and any impact that the aquifer, if it is to pull any more from that aquifer, and any effects to the southern portions of those properties."

**MCKAY** "Are you saying that there is not enough water, there is enough water..what?"

**MEYERES** "There has just been an issue. The quantity is not enough. It will pull the aquifer and affect surrounding properties or neighboring homes. The main thing to do here is to get testing done on the quantity of that water, or that aquifer."

**MCKAY** "There is not a rural water district there?"

**MEYERES** "Not to my knowledge, there is not. Not that far north."

**MCKAY** "It is just east of Sedgwick and north of Valley, so I guess there is no rural water district that goes into any of that area."

**MEYERES** "I have done that through the subdivision and I did not see that that was adequate to tie into rural water district."

**MCKAY** "So are you saying to approve this subject to working it out with you and making sure it is okay, or to defer it until you get it worked out."

**MEYERES** "Deferring could be an option. We could also approve it at this time when sufficient quantity tests have been completed."

**LOPEZ** "What about the separation between sewage and the water table?"

**MEYERES** "There has been adequate distance; there is the ten foot requirement. Other than that, we have gone through the plat to establish what type of groundwater, what elevation it is at, where it is at opposed to the flood plain. So that will all be decided when we can issue a permit or not."

**GAROFALO** "Mark, can I ask you to come up? Would you have a problem with a deferral?"

**SAVOY** "I would rather you would vote on it. We agreed to meet Health Department requirements at Subdivision, and the water test was not a part of that, but we are willing to add that into the bore tests and the other items that were required by the Health Department and satisfy those requirements in the same fashion that we had planned them."

**MCKAY** "If they don't come out positive, you are willing to drop this?"

**SAVOY** "Well, if we don't satisfy the Health Department, I guess we would have a problem with them, I suppose."

**GAROFALO** "Are there any other speakers on this issue?"

**JOEY RATHBUN** "I live at Route One Sedgwick. I spoke to you before. I am a neighbor of this particular property. As we have said before, we have a number of concerns. The quantity of water; the quality of water. Certainly the quality of water after 18 lagoons are added.

Yes, some of this property is within the 100-year flood plain, but as all of you know, for the 100-year flood plain, we don't wait 100 years for that flood anymore. It happens about twice a year. So I would think that common sense prevails over existing code. Thank you."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments and Health Department approval.

**MCKAY** moved, **WARREN** seconded the motion.

**KROUT** "Mark, will you come up again? Can you explain in a little more detail what drainage studies still have to be done?"

**SAVOY** "Actually, it is completed. We used a HEC program that Jim Weber was not familiar with. It is one that Bob George is actually the one that reviews the drainage. The sliver of ground right here (indicating) is in a 100-year flood zone. The structures and lagoons fit up out of that without any problem. We are not going to encroach into it. Our minimum pad elevation has been established based on that 100-year flood elevation, and the natural ground is above it.

What we do in those drainage concerns with the County is that we retain water so that no more water leaves the site and the developed state is the undeveloped state. That is fairly easy to do on large tracts like this because you are not creating near as much hard surface as you are in an urban subdivision."

**MCKAY** "Mr. Chair, if the second will agree, I would like to change my motion from approval to deferral until this is all taken care of. At Subdivision last week, the deal on the HEC study was supposed to be taken care of by this week. If it hasn't gotten to the County and they haven't approved it, then I don't want two conditions on it. I would just as soon defer it until they get it all taken care of."

**SAVOY** "I am saying that it has been."

**MCKAY** "Weber hasn't approved it because he was supposed to let us know."

**SAVOY** "That is the word he gave Neil. Neil checked with him this morning."

**MCKAY** "Okay. I misunderstood that."

**KROUT** "Just to follow up, because normally they don't keep retention on 5-acre lot developments. Are you saying that you are retaining the water?"

**SAVOY** "No. You've got a flood zone there. Of course the neighbors are concerned about how much water leaves that site, and if we contribute additional water to it, how much additional effect that has downstream. And it is not unusual on any plat, whether it is 5 acres or a half acre to maintain your drainage at the present undeveloped rate."

**MARNELL** "Are there restrictions on those lots on the right side that prevents construction in that flood zone?"

**SAVOY** "We have a floodway reserve easement there, we have minimum pad elevations. You can't build in the easement and the easement is designed to include all of the ground that is in the 100-year zone. On top of that, we have minimum pad elevations that do not allow excavation lower than that on adjacent property that is now presently above that."

**KROUT** "I am sorry, and I know that this is a small case, but when we require detention, we usually have a reserve somewhere on the site where all of the detention is directed to before it goes on down stream. Do you have a place like that?"

**SAVOY** "This is a floodway reserve that the flood zone is in. We are going to retain it within that floodway reserve through a series of small dams, you might call them."

**KROUT** "Okay. They will be designed to contain water?"

**SAVOY** "To not allow an increase in run-off off of this property. "

**KROUT** "But to carry the 100-year storm water."

**SAVOY** "Yes, sir."

**PLATT** "Based on this motion, would the case not proceed to the County Commission until the Health Department approved it, or would it go to them and then the building permit would be held up until it was approved?"

**KROUT** "You are asking if it would not proceed to the County Commission until the Health Department? Right."

**PLATT** "It would not."

**MCKAY** "If you want me to, I will make that part of the motion."

**REVISED MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments and the approval of the drainage by the County Engineer, and the approval by the Health Department. And that it not proceed until that is all accomplished.

**MCKAY** moved, **WARREN** seconded the motion.

**LOPEZ** "I have a question of Mark again, on this retention issue. If you are going to design a series of, as you stated, dams, to limit the flow of run-off so it isn't any higher than it would be during a regular 100 year flood plain, are you saying that the dams will be higher than the water level during the 100-year flood plain when you are finished constructing the dams?"

**SAVOY** "I am saying that it will slow the rate of flow such that water will not leave this property at any greater rate after it is developed than it does presently in its undeveloped state. As to the height of the dam, we could get into design, but I would rather not design. I don't know how high they are going to be or anything."

**LOPEZ** "My question is that I am assuming that we will know what the height of water level will be in that area of the 100 year flood plain. So if you know what that height is..."

**SAVOY** "Right, but I don't design them, so I would need one of my partners here to answer that question for you specifically."

**KROUT** "I'm sorry, but if we haven't designed what the height of the dam is going to be, how do we know how wide that flood reserve needs to be?"

**SAVOY** "The flood reserve is based on the 100-year storm today. We aren't going to increase that area any by slowing down the rate of the flow. There will be excavation that takes place in there for retention. It is an engineering mystical, magical marvel as far as I am concerned."

**KROUT** "The Planning Commission and others have become more skeptical about the engineering marvels, and what affect they are having on the flood plain. I just want to try to get a better understanding."

**MCKAY** "I want it understood that we have all of these conditions in writing prior to this proceeding to the County Commission."

**KROUT** "It is just very unusual. I have never heard that the County Engineer was requiring retention for 5-acre lots before."

**SAVOY** "I don't know that he required it."

**KROUT** "Okay. It is not part of your drainage plan, then. It is just something you are agreeing to."

**SAVOY** "Not necessarily. It is really for an aesthetic value somewhat. We have homes here, potential water in this area at different times in the year, and property back here that could potentially be used but not accessible in some cases. So the desire is to build kind of a little joint pond in pairs of lots, leaving a way to get to the backside of the property basically. If you want to call them dams, through the little dams."

**KROUT** "If it is not part of your engineering approval now, who will be required to approve that later?"

**SAVOY** "It all goes through the County. Anything we do in that flood zone has to be approved by the County. We can't do anything in the flood zone without permission."

**MCKAY** "That was my point, Marvin. The County has to approve what they are going to do."

**VOTE ON THE MOTION:** The motion carried with 10 votes in favor. There was no opposition.

**KROUT** "Mrs. Rathbun, we will notify you one way or the other as to whether the Health Department is testing or not."

**NOBEL CALLOWAY** "I would like to speak on this, sir, if I could. I am one of the property owners."

**GAROFALO** "I asked if there was anyone to speak and you didn't raise your hand."

**CALLOWAY** "I guess I didn't hear you sir, I'm sorry."

**GAROFALO** "Well, we have already had a motion, and have passed that motion. We will hear your comments for the record."

**CALLOWAY** "Just south of this area that we are talking about, and this damming area that they are talking about, this 100-year water problem, if you are going to build dams there, the houses are going to have to be elevated so high that there won't be water going into them. If they leave it like it is, the people that bought this property comes in there and cut a drainway out of



this property where this area is, there is usually about three or four acres of water standing there, mostly all of the time when it rains and floods out there. This is in a floodplain area. I know for a fact that this was cut through here not too long ago, and dirt was taken and piled all along the fence row to this neighbor that I am talking about so that that water could drain out of that field.

If you go in there and dam it all, there is going to be more than a 3 or 4 acre lake up there in this particular area that we are talking about. My concern is just like Joey Rathbun said, it floods about once or twice a year out there, and several times a year you can't even get out of that property. I can't go into Valley Center, I can't get out on 125<sup>th</sup> Street, I can't go to Sedgwick and get out because it is usually flooded there, too. So if you come in there and build a bunch more homes with lagoons, my well particularly has been under water two or three times since I have been out there because of this high water. If we start putting homes in there, we are going to have the same problem, only it is going to be worse than what it is.

That field that this water comes through is usually always wet down there, at least two or three months out of the year. Since I have been out there, there has always been water down in this field. I just wanted to put my comments in about that because it is a problem. Thank you."

**GAROFALO** "Okay, thank you."

-----  
Item taken out of order:

**2/5. S/D 99-62** – Final Plat of RIDGEPORT NORTH 3<sup>RD</sup> ADDITION, located on the south side of 37<sup>th</sup> Street North, east of Ridge Road.

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a zone change. Prior to this plat being heard by the MAPC, the zone change have been submitted and approved.
- B. As the eastern portion of this site is adjacent to Wichita's city limits, the applicant shall submit a request for annexation. Prior to this plat being scheduled for City Council review, annexation of the eastern portion of the site will need to be completed. Upon annexation, the property will be zoned SF-6, Single-Family Residential and thereby permit the lot sizes being platted.
- C. This site is located beyond the Northwest Wichita sanitary sewer growth limits. The boundary will need to be extended to include service to this plat. The applicant shall guarantee extension of sanitary sewer and City water. City Engineering needs to comment on the need for any additional guarantees or easements. The Applicant shall provide a guarantee for paving of the west half of Eisenhower.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. City Engineering needs to comment on the status of the applicant's drainage plan. A drainage guarantee is required.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. For those reserves being platted for sidewalks or drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the sidewalks or drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

City Fire Department needs to comment on the plat's street names. The final plat tracing needs to indicate the following street name changes: 34<sup>th</sup> St. North Circle to 34<sup>th</sup> Circle North, and 34<sup>th</sup> St. North Court to 34<sup>th</sup> Court North.

- I. The applicant shall guarantee the construction of the proposed interior streets. This guarantee shall include the installation of a temporary cul-de-sac for Lakeway. The guarantee shall also include sidewalks on one side of the through streets – 34<sup>th</sup> St. North, Lakeway, Brookview and Ridge Port.
- J. The final plat shall indicate a 10-ft dedication of right-of-way along the south portion of Eisenhower and a 30-ft dedication along the north portion of Eisenhower. The requested right-of-way has been provided.
- K. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- L. Traffic Engineering shall comment on the need for improvements to perimeter streets. No improvements are required.

- M. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- N. City Fire Department should comment on the length of the interior streets. Brookview Court (700 ft) in Block 2 exceeds the 600-ft limitation on street length. City Fire has approved the length of this street due to its 64 foot width.
- O. The platting binder indicates that an additional party has an ownership interest in the site. This party needs to be added as part of the owner's signature block.
- P. The dimensions on the north and south lines of Lot 27, Block 1, do not match the dimension on the north line of Lot 28, Block 1.
- Q. The triangular piece of land north of Lot 1, Block 2, needs to be labeled as a Reserve.
- R. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- S. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- T. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- V. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- W. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Y. Perimeter closure computations shall be submitted with the final plat tracing.
- Z. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- AA. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. The Applicant shall meet with KGE and Southwestern Bell before the MAPC meeting to determine location of additional easements.
- BB. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

**NEIL STRAHL**, Planning staff "This was approved by the Subdivision Committee, contingent upon the applicant meeting with the utility companies and coming to an agreement on the location in width of additional easements as is stated in Item AA. Utility easements are typically centered on the side and rear lot lines and they are usually 20 feet wide along the rear lot lines and 10 feet wide along the side lot lines. The Subdivision regulations specify additional width may be added in instances where utility easements may be used for drainage purposes. In this plat, there are lots where storm sewers are planned to be located within a utility easement, and the utility companies have requested additional width, in some cases up to 30 feet. That has been objected to by the applicant, and therefore a meeting was requested between the applicant and the utility companies.

As of today, the applicant has met with the utility companies. The width and location of all of the easements has been agreed upon. They are all to be within 20 feet wide and the specific locations of Southwestern Bell, KG&E, sanitary and storm sewer have all been specified."

**GAROFALO** "Are there any questions of Neil? Okay. Is the applicant here?"

**PHIL MEYER** "I am with the Baughman Company, agent for the applicant. We are in agreement as Neil present this."

**MICHAELIS** "Am I to understand, then, that basically we are right back where everything is fitting into a 20-foot easement, and we really didn't have to do any extensions or anything?"

**MEYER** "We re-adjusted some locations to make sure that everything fit within the 20-foot to keep each utility company happy. So we made some location changes but we kept the width the same."

**MCKAY** "I have a statement. One of the things KG&E and the utilities requested was 30 foot carte blanche clear across the whole project. What this is now, as far as I am concerned, is when they bring in one, if they request it, and it is not for the whole plat, it is just where they actually need it. Because going to 5,000 square foot lots, and if you are going to take 30 feet off of the back of a piece of property, especially where property is already existing that only has a 10-foot easement, you have to get it all in a new plat, it may make it undoable, let's put it that way."

**GAROFALO** "Is there anyone else to speak on this item? Okay, we will take it back to the Commission."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved.

**WARREN** moved, **WARNER** seconded the motion, and it carried unanimously (11-0).

-----  
**2/6. S/D 99-84** – Final Plat of RIDGE PORT 3<sup>RD</sup> ADDITION, located north of 29<sup>th</sup> Street North, east of Ridge Road.

- A. This site is located beyond the Northwest Wichita sanitary sewer growth limits. The boundary will need to be extended to include service to this plat. City Engineering needs to comment on the status of sewer service to this plat. The applicant shall guarantee extension of sanitary sewer and City water. City Engineering needs to comment on the need for any additional guarantees or easements. A respread agreement is needed.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A drainage guarantee is required.
- D. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- E. For those reserves being platted for pedestrian improvements or drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the pedestrian improvements or drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- F. City Fire Department needs to comment on the plat's street names. The street names are acceptable.
- G. The applicant shall guarantee the construction of the proposed interior streets.
- H. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- I. City Fire Department should comment on the length of the interior streets. Northwind (680 ft) exceeds the 600-ft limitation on street length. City Fire has approved the length of this street due to its 64 foot width.
- J. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. The Applicant shall meet with KGE and Southwestern Bell before the MAPC meeting to determine location of additional easements.
- T. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

**NEIL STRAHL**, Planning staff "This plat, like the previous plat, was approved by the Subdivision Committee conditioned upon the applicant meeting with the utility companies and coming to an agreement on all of the utility easements. Subsequent to the Subdivision Committee meeting, the applicant has met with the utility companies and the location of the utility easements has been agreed upon."

**GAROFALO** "Are there any questions of Neil? Is the applicant present? Do you want to comment on anything? You are in agreement?"

**PHIL MEYER** (From the audience) "The same as the other one."

**GAROFALO** "Okay. Is there anyone else here to speak on this item? If not, we will bring it back to the Commission. What's the pleasure?"

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved.

**MICHAELIS** moved, **WHEELER** seconded the motion, and it carried unanimously (10-0).

-----  
**2/7. S/D 99-53** – Revised Final Plat of UNIVERSAL 4<sup>TH</sup> ADDITION, located on the northwest corner of Greenwich Road and Kellogg.

- A. Municipal services are available to serve this site. City Engineering needs to comment on the need for guarantees or easements. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Traffic Engineering needs to comment on the proposed access controls. The plat denotes two openings along Greenwich Road including a joint access between the two lots. Complete access control has been dedicated along Kellogg with one opening along the west 30 feet of the plat contingent upon construction of a frontage road. The Applicant shall guarantee the closure of any driveway openings located in areas of complete access control. Distances should be shown for all access controls. The access controls are approved.

- E. Traffic Engineering needs to comment on the need for additional right-of-way. The Applicant shall meet with Traffic Engineering before the MAPC meeting regarding Traffic Engineering's request for the dedication of an additional ten feet of right-of-way along Greenwich.
- F. The platting binder indicates that the site's ownership is in the name of an additional party. This party must be included in the owner's signature block.
- G. The platting binder indicates a mortgagor on the site. The final plat tracing needs to be signed by any party holding a mortgage on the site.
- H. The scale needs to be corrected.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

**NEIL STRAHL**, Planning staff "This plat is located on the northwest corner of Greenwich Road and Kellogg. The Subdivision Committee had approved this plat, conditioned upon the applicant meeting with Traffic Engineering and coming into an agreement regarding the right-of-way along Greenwich. The applicant has met with Traffic Engineering and has agreed to dedicate an additional 10 feet of right-of-way on Greenwich that will utilize, for the future, the Kellogg/Greenwich interchange. Are there any questions for staff?"

**GAROFALO** "Are there any questions? Okay. Is the applicant present?"

**PHIL MEYER** "We are in agreement with this."

**GAROFALO** "Okay, thank you. Are there any questions? Is there anyone else here to speak on this item? Okay, we will take it back to the Commission. What is the pleasure?"

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved.

**LOPEZ** moved, **MICHAELIS** seconded the motion and it carried unanimously (11-0).

-----  
**2/8. S/D 99-81**- One-step Final Plat of WILSON FARMS 2<sup>ND</sup> ADDITION, located south of 21<sup>st</sup> Street North, west of Webb Road.

**NEIL STRAHL**, Planning staff "Similar to the others, this plat was approved by the Subdivision Committee conditioned upon the applicant meeting with the utility companies and coming to an agreement on the location and with the utility easements. That meeting has occurred and the utility easements have all been agreed upon to be within 20 feet."

**GAROFALO** "Are there any questions of Neil? Is the applicant present?"

**GREG ALLISON** "I am with Mid-Kansas Engineering Consultants, Inc., representing the applicant. We have come to an agreement with staff comments."

**GAROFALO** "Okay, thank you. Are there any questions? Is there anyone else here to speak on this item? Seeing no one, I will bring it back to the Commission."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved.

**MICHAELIS** moved, **WHEELER** seconded the motion, and it carried unanimously (10-0).

-----  
**GAROFALO** "We can take items 2/4, 2/9, 2/10, 2/11, and 2/12 in one motion now, unless someone has questions on one of them."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved.

**MCKAY** moved, **WHEELER** seconded the motion.

**GAROFALO** "Okay. Is there anyone here to speak on any of these items?"

**VOTE ON THE MOTION:** The motion carried unanimously (11-0).

-----  
**2/4. S/D 97-34** - Final Plat of RESTHAVEN GARDENS OF MEMORY ADDITION, located on the northeast corner of Kellogg and 119<sup>th</sup> Street West.

- A. City Engineering needs to comment on the need for guarantees and easements. A petition is required for both City water and sanitary sewer; the sewer petition to be held until future need arises.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. No guarantees are required.
- D. The applicant proposes four access openings along Kellogg and two openings along 119<sup>th</sup> St. West. Traffic Engineering has advised the applicant that the four openings along Kellogg will connect to the one way proposed frontage road and access will be limited to right in and right out movements. The plat's text should note these access controls as being contingent upon construction of the frontage road.
- E. Traffic Engineering has required 75-ft of half street right-of-way along 119<sup>th</sup> St. West for a distance of 175 feet north of the Kellogg right-of-way line, then tapering to 50 feet in width at a distance of 275 feet north of the intersection. The right-of-way on the southwestern corner of the plat shall consist of a 60-ft radius connecting the 119<sup>th</sup> St. right-of-way line and the Kellogg right-of-way line. The final plat has included the requested right-of-way.
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- J. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

-----  
**2/9. S/D 99-82 – One-Step Final Plat of LAWRENZ ADDITION, located south of 95<sup>th</sup> Street South, on the east side of 151<sup>st</sup> Street West.**

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan.
- D. County Engineering needs to comment on the access controls. The plat denotes one opening per lot. The access controls are acceptable.
- F. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- G. The bearing for the east line of the plat needs to correspond with the legal description in the plat's text.
- H. Utility easements must be definitely located as per Subdivision Regulations.
- I. The MAPC signature block should be revised to reference "Francis S. Garofalo" as the MAPC Chairman.
- J. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five

(5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

-----

**2/10. S/D 99-77** – One-step final plat of VIA CHRISTI REGIONAL MEDICAL CENTER, INC ADDITION, located on the northeast corner of Murdock and Topeka.

- A. Prior to this plat being heard by the MAPC, the zone change and CUP Amendment shall have been approved.
- B. City water and sewer appears to be available to serve the site. City Engineering needs to comment on the need for guarantees or easements. No guarantees are required.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- E. Traffic Engineering needs to comment on the access controls. The plat proposes two access openings along Topeka and two access openings along Murdock. The plat also denotes 150 feet of complete access control along both perimeter streets from the intersection in accordance with the Subdivision regulations. The applicant shall guarantee the closure of the street returns for Emporia. Distances shall be shown for all segments of access control. The applicant shall provide a guarantee for a left turn bay on Murdock and for modifications of the traffic signal at Emporia.
- F. Traffic Engineering needs to comment on the need for traffic improvements (e.g. westbound right-turn lane along Murdock, signal modifications, etc.)
- G. Traffic Engineering needs to comment on the need for dedication of additional right-of-way along perimeter streets; particularly additional right-of-way along Murdock for a potential westbound right turn lane. No additional right-of-way is needed.
- H. On the final plat, a note shall be placed on the face of the plat indicating that this Addition is subject to the conditions of Community Unit Plan DP-132,  
  
Amendment #1.
- I. The MAPC signature block should be revised to reference "Francis S. Garofalo" as the MAPC Chairman.
- J. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.



- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

-----  
**2/11. S/D 99-80 – One-Step Final Plat of RAINBOW ESTATES 2<sup>ND</sup> ADDITION, located on the east side of Seneca, South of 55<sup>th</sup> Street South.**

- A. City Engineering needs to indicate if petitions for extensions of municipal water or sanitary sewer need to be provided at this time. Municipal water is available to serve the site. A petition for extension of sanitary sewer is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. County Engineering has requested a drainage easement along the north lot line.
- E. County Engineering needs to comment on the need for access controls. The preliminary plat denotes two existing access openings. County Engineering has limited the site to one access opening. The access controls shall be referenced in the plat's text on the final plat tracing.
- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

-----  
**2/12. S/D 99-85** – One-step Final Plat of DONALDSON-TALBERT ADDITION, located on the north side of MacArthur Road, east of West Street.

- A. Since this property is adjacent to the City of Wichita, the Applicant shall request annexation into the City. Upon annexation, the property will be zoned SF-6, Single Family Residential. If annexation is completed prior to the plat's submittal for City Council review, the County Commissioner's signature block may be eliminated.
- B. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval.
- C. City Engineering requests the Applicant attempt to obtain a valid sewer petition. A petition for future City water (and sewer if applicable), shall be required.
- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. An off-site drainage easement is required.
- E. City Fire Department requires a 20-foot gravel road with a turnaround to within 150 feet of the most remote point of any structure. A site plan shall be submitted to City Fire Department prior to the issuance of a building permit.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.

- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

-----  
**GAROFALO** "Now we will take items 2/13 through 2/18."

**KROUT** "Do any of these items need special attention?"

**VERTS** "No."

**GAROFALO** "Okay. Is there anyone here in the audience to speak on these six vacation items? There was a man here, I don't know if he still is. There he is. Sir, do you want to say anything here? Okay. I guess we can take them all in one motion, then."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved.

**WHEELER** moved, **MICHAELIS** seconded the motion, and it carried unanimously (11-0).

**2/13. V-2205** – Gordon and Margaret Stewart request the vacation of a portion of a building setback described as:

The west 20 feet of the 30-foot building setback as plated on Lot 26, Sherwood Glen 3<sup>rd</sup> Addition, Wichita, Sedgwick County, Kansas. Generally located north of 37<sup>th</sup> street North and west of Seneca (4033 N. Amidon).

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  - 1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time November 23, 1999, which was at least 20 days prior to this public hearing.
  - 2. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
  - 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of utility easements described in the petition should be approved, subject to the following conditions:
  - 1. The appearance of the room addition shall be similar in style and color to the existing home.
  - 2. The roofline of the room addition may be lower in elevation than the existing roofline, but it shall have the same pitch and angle as the existing roof.

The Subdivision Committee recommends approval, subject to the following conditions:

- 1. The appearance of the room addition shall be similar in style and color to the existing home.
- 2. The roofline of the room addition may be lower in elevation than the existing roofline, but it shall have the same pitch and angle as the existing roof.

-----  
**2/14. V-2206** – RRGNL,LLC c/o Jay Russell requests the vacation of a portion of access control, described as:

The east 30 feet of the west 275 feet of access control adjacent to Reserve C along 29<sup>th</sup> Street North, Ridge Port Additin, Wichita, Sedgwick County, Kansas. Generally located north of 29<sup>th</sup> Street North and 1/4 mile east of Ridge Road.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

4. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time November 23, 1999, which was at least 20 days prior to this public hearing.
5. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
6. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of utility easements described in the petition should be approved.

The Subdivision Committee recommends approval.

-----  
**2/15. V-2207** – Starr Investments, LLC, c/o Steven Barrett (owner); Bencor Development, c/o Jon Gorski (contract purchaser) requests the vacation of utility easements on property described as:

Easement recorded in Misc. Book 469, page 388:

Beginning at a point on the south line of Lot 10, Howard's Addition, 191.75 feet east of the center line of Hillside Avenue; thence south to a point on the north line of Lot 2, Holyoke Avenue, Floral 2<sup>nd</sup> Addition, 191.75 feet east of the center line of Hillside Avenue; thence west 36.67 feet; thence northeasterly to a point on the south line of Lot 9, Howard's Addition, 171.75 feet east of the center line of Hillside Avenue; thence east to the point of beginning.

Easement recorded in Misc. Book 496, page 385:

Beginning at a point on the south line of Lot 10, Howard's Addition, 191.75 feet east of the center line of Hillside Avenue; thence north to a point on the north line of Lot 7, Howard's Addition, 191.75 feet east of the center line of Hillside Avenue; thence west 20 feet to a point on the north line of Lot 8, Howard's Addition, 20 feet west of the point of beginning; thence east to the point of beginning. Generally located on the southeast corner of Central and Hillside.

The applicant is requesting to vacate adjoining utility easements (totaling 20-feet in width) on adjacent lots. These lots will be used for future commercial development.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time November 23, 1999, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- C. Therefore, the vacation of utility easements described in the petition should be approved, subject to the following conditions:
  1. The applicant shall dedicate, by separate instrument, a substitute easement for the sewer line to be relocated as required by the City of Wichita Departments of Public Works and Engineering.
  2. The applicant shall grant a temporary easement by separate instrument covering the existing easements until such time as the replacement lines are in place.
  3. The applicant shall submit a guarantee for the construction of the new lines until such time as the replacement lines are in place.

The Subdivision Committee recommends approval, subject to the following conditions:

1. The applicant shall dedicate, by separate instrument, a substitute easement for the sewer line to be relocated as required by the City of Wichita Departments of Public Works and Engineering.
2. The applicant shall grant a temporary easement by separate instrument covering the existing easements until such time as the replacement lines are in place.

3. The applicant shall submit a guarantee for the construction of the new lines until such time as the replacement lines are in place.

-----  
**2/16. V-2208** – Bencor/Maize21, LLC, c/o Jon Gorski requests the vacation of a contingent street dedication, described as:

The south 15 feet of the east 252.74 feet of Lot 1, Block A, L.R. Jones 3<sup>rd</sup> Addition, Sedgwick County, Kansas, and a portion of said Lot 1 described as follows: Beginning at a point 15 feet north and 58.57 feet west of the southeast corner of said Lot 1; thence on a curve to the left 92.80 feet to the east line of said Lot 1, said curve having a radius of 60 feet, and a long chord of 83.83 feet bearing N 44°18'38"E; thence south along the east line of said Lot 1 for a distance of 58.57 feet; thence S88°37'15"W for a distance of 58.57 feet to the point of beginning, except the west 4.16 feet thereof. Originally granted on the Contingent Dedication recorded on Film 1949, page 931 and shown on the Lot Split recorded on Film 1957, page 99.

Northwest corner of 21<sup>st</sup> Street North and Maize Road

The applicant is requesting to vacate a contingent street dedication for commercial development of the site. The applicant will dedicate street right-of-way that is continuous with previous 20-foot street dedication west of this property, along 21<sup>st</sup> Street North, and an additional 5 feet of street right-of-way along Maize Road.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time November 23, 1999, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of utility easements described in the petition should be approved, subject to the following condition:
  1. The applicant shall dedicate, by separate instrument, additional street right-of way, which shall include 20 feet along the south property line (21<sup>st</sup> Street North) and 5 feet along the east property line (Maize Road).

The Subdivision Committee recommends approval, subject to the following condition:

1. The applicant shall dedicate, by separate instrument, additional street right-of way, which shall include 20 feet along the south property line (21<sup>st</sup> Street North) and 5 feet along the east property line (Maize Road).

-----  
**2/17. V-2209** – Riverside Health Systems, Inc., c/o Robert Dixon request the vacation of a utility easement, described as:

The north 20 feet of Lot 1, Block 2, Riverside Health Systems 3<sup>rd</sup> Addition, Wichita, Sedgwick County, Kansas. Generally located between Edwards Avenue and McLean Boulevard, south of 9<sup>th</sup> Street North.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  7. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time November 23, 1999, which was at least 20 days prior to this public hearing.
  8. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
  9. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- D. Therefore, the vacation of utility easements described in the petition should be approved, subject to the following condition:

1. The west 20 feet shall be retained as utility easement.  
The Subdivision Committee recommends approval, subject to the following condition:

1. The west 20 feet shall be retained as utility easement.
- 

**2/18. V-2210** – Midwest Environmental Contractors, Inc., request the vacation of an access control, described as:

Lots 1 and 2, West Towne Industrial Addition, Wichita, Sedgwick County, Kansas. Generally located on the east side of Hoover between Harry and Kellogg (1400 Block of South Hoover).

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time November 23, 1999, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of utility easements described in the petition should be approved, subject to the following condition:

1. The applicant shall dedicate, by separate instrument, access control along Hoover Rd. as indicated on the submitted site plan.

The Subdivision Committee recommends approval, subject to the following condition:

1. The applicant shall dedicate, by separate instrument, access control along Hoover Rd. as indicated on the submitted site plan.
- 

**MCKAY** "Mr. Chair, I have a question. When we make conditions on the Subdivision and they have been adhered to by the time it gets here, why do we take these individually?"

**GAROFALO** "That is a good question."

**MCKAY** "I understand on the one out in the County, because it is a question, but if these have been adhered to and they have gotten together and the staff tells us it is okay, then why?"

**KROUT** "Sometimes you pull those kinds of items out and ask us what has happened since subdivision?"

**GAROFALO** "That's true."

**VERTS** "This is the official public hearing for those cases."

**KROUT** "He was talking about the plats."

**MCKAY** "Yes, the plats."

**VERTS** "Oh, okay, I'm sorry."

**MCKAY** "That is all I am talking about. We would have six plats here that we could have taken in one motion, I think, except for the one."

-----

#### **ZONING:**

3. **Case No. Z-3345** – Nelson Tucker (Owner) and P.E.C. c/o Gary Wiley (Agent) request zone change from "SF-6" Single-Family Residential to "GC" General Commercial on 3.5 acres of property, described as:

A tract of land in the Southeast Quarter of Section 17, Township 28 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, described as follows: The East 630 feet of the South Half of the Southeast Quarter of said Section 17, except the South 649.5 feet; and except the North 200 feet; and except the south 25 feet of the North 225 feet of

the East 342 feet; and except the East 300 feet of the North 444.15 feet of the South 1293.65 feet thereof. Generally located north of 47<sup>th</sup> Street South and west of Broadway.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting to rezone a 3.5 acre tract located north of 47<sup>th</sup> Street South and west of Broadway from "SF-6" Single Family Residential to "GC" General Commercial. The site is currently undeveloped and unplatted. The applicant is seeking the zone change to expand an existing vehicle sales lot about 2.6 acres in size located immediately east of the site requested for rezoning. The applicant's current vehicle sales lot is located further north on Broadway near 31<sup>st</sup> Street South, but there is not sufficient land available at that location to expand the business. If this request is approved, the applicant will move his car lot to this larger location.

The property south of the site is zoned "GC" General Commercial and is developed with a grocery store and an auto parts store. The property north of the site is zoned "LC" Limited Commercial and "SF-6" Single Family Residential and is developed with a restaurant, a motel, and single family residences. The property east of the site is zoned "GC" General Commercial and is developed with a recreational vehicle sales lot and a strip commercial center. The property west of the site is zoned "SF-6" Single Family Residential and is developed with single family residences.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC & SF-6"	Restaurant, motel, and single family residences
SOUTH: "GC"	Grocery store and auto parts store
EAST: "GC"	Recreational vehicle sales lot and commercial center
WEST: "SF-6"	Single family residences

**PUBLIC SERVICES:** Municipal water and sewer are available to serve this site. The site has access to Broadway, a five-lane arterial with existing traffic volumes of 16,000 average daily trips (ADT). The proposed 2030 Transportation Plan estimates future traffic volumes of 20,000 ADT.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommends that auto-related uses should be guided to areas such as this site where auto-related uses already exist. Expansions of businesses at existing sites are generally encouraged over constructing completely new sites for business expansions.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year and the following conditions in the form of a Protective Overlay:

A 6-foot masonry wall shall be constructed along the west and north property lines where a residential district abuts the site.

The site shall be developed in accordance with the screening requirements of the Unified Zoning Code and the Landscape Ordinance including street landscaping requirements along Broadway; parking lot tree requirements, and buffer tree planting on the west and north property lines.

Outdoor speakers and sound amplification systems shall not be permitted.

The following uses shall not be permitted: adult entertainment establishments, group homes, group residences, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor can be developed and may serve liquor, as long as food is the primary service of the establishment.

The following uses shall be prohibited within 200 feet of residentially-zoned property: service stations, convenience stores with gas islands, restaurants with drive-in or drive-thru facilities, and vehicle service or repair uses that have overhead doors facing those districts.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property south and east of the site is zoned "GC" General Commercial and is developed with commercial uses, including auto-related uses. The property north of the site is zoned "LC" Limited Commercial and "SF-6" Single Family Residential and is developed with commercial uses and single family residences. The property to the west of the site is zoned "SF-6" Single Family Residential and is developed with single family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single Family Residential; however, the site is unlikely to develop with single family residences due to its location. The site is surrounded by existing commercial uses on the north, south, and east and has no access to a street without an easement through developed property. Expansion of the existing commercial uses from the east onto the site seems to be a more logical option than expanding the existing residential uses from the north or west onto the site.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions imposed upon the applicant, including the screening wall, landscaping, and the limitation on the proposed uses, should alleviate any potential impacts on the surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommends that auto-related uses should be guided to areas such as this site where auto-related uses already exist.
5. Impact of the proposed development on community facilities: Development of the site will slightly increase traffic in the area; however, the roadways in the area are sufficient to handle the increase in traffic. Water and sewer service can be extended to the site from adjacent properties. There should be minimal impact on municipal services in the area.

**KNEBEL** "Staff is recommending that a 6 foot masonry wall be built along the west line, between the car lot and the residences. The staff report also indicates the north line. When I included that in there, I was under the impression that the lot went all the way up to this point here (indicating), rather than that. Perhaps the Planning Commission would rather consider a fence or no screening requirement at all between the two commercial. Staff has also recommended landscaping. In the landscaping, the staff comments state a buffer here and then along the north. As with the wall, the buffer on the north probably would not be required. It also mentions the street landscaping along Broadway, but really the zoning is for this lot here and the applicant prefers that the landscaping of this lot be done in conjunction with the building permit when the structures are demolished, rather than as a condition of the zoning.

Also, the staff report mentions parking lot tree requirements, which are typically not required in car sales. The other conditions include no outdoor speakers or sound amplification restricting several permitted uses in the 'GC' district, such as adult entertainment, group homes and residences, half-way houses and etc., and also restricting uses such as service stations, convenience stores, etc. from the back 200 feet from the residential property. These are based on the findings found in your staff report. I will stand for any questions."

**GAROFALO** "Are there any questions?"

**HENTZEN** "Where you require a privacy wall, I assume you are talking about a masonry wall?"

**KNEBEL** "That is correct."

**HENTZEN** "Okay. If you put a masonry wall up there and then you require a buffer of trees, why do we put the wall up to keep the neighbors from looking at the trees? In other words, if you put up a privacy fence, you are talking about trees on this man's property?"

**KNEBEL** "Correct. I think the intent is that the wall would restrict the ground level view of the property and the trees would then extend above the wall, and hide any taller structures that may exist on this site."

**HENTZEN** "I just don't accept the idea that you need walls and trees both. Out on the Broadway side, if you are going to try to landscape along the road or something, that is a different thing."

**MARNELL** "Scott, would you just clarify your comments again with respect to Condition No. 1 and No. 2. I took your comments to mean that you were removing those issues."

**SCOTT** "Right. I think when I recommended the north line, I don't see that that makes any sense that you have general commercial here. Perhaps you would want to require a fence, but I don't think that that is absolutely necessary. Then, on item No. 2, the street landscaping on Broadway, since it is not actually in the zoning change, but is a part of a single ownership, could be handled as a requirement of the building permit when they demolish the existing structures and rebuild the parking lot. Tree requirements, which I understand are not typically required for vehicle sales lots, only for parking lots. And then again, the tree buffering along the north line could be removed. If there is not going to be a wall or fence, I don't see that a tree buffering is necessary either."

**GAROFALO** "Scott, should we have something about lighting in these conditions?"

**SCOTT** "I didn't think of that, but I did get Susan's speakers and sound amplification in there, but I didn't think of shielding the lights or restricting the height limit to them."

**MARNELL** "Would you object to Condition No. 2 being totally removed from the conditions?"

**SCOTT** "I still think that we should have a buffer tree planting on the west line. That would be the only item."

**MCKAY** "Why? It is not required for car lots."

**KROUT** "Well, what is not required for car lots is that you provide low shrubs to screen, like we do parking lots, to screen the street. We still do require of a car lot that they comply with the Landscaping requirements, which is to plant trees every 50 feet or so. I think that is a reasonable thing to ask along Broadway."



**MARNELL** "So could we strike it after Broadway, since that is going to be covered by the Landscape Ordinance anyway?"

**KROUT** "Yes. I think that what after Broadway you could strike it because it is covered by the Landscape Ordinance."

**WARREN** "So you are just going to keep the first sentence?"

**MARNELL** "Yes, to the semi-colon."

**GAROFALO** "And strike the rest? Okay. Are there any other questions of Scott?"

**MARNELL** "We would also strike the word 'north' out."

**JOHNSON** "Marvin, at the Dillon's south of there, are there trees planted along that fence?"

**KROUT** "I think that may have been developed before that landscaping requirement."

**MICHAELIS** "So are we saying, then, that the way this written that we are going to require the wall and not the trees, except on Broadway, and Broadway will conform to the Landscape Ordinance?"

**KROUT** "The Landscape Ordinance does require buffered trees when you are adjacent to a residential zone."

**MICHAELIS** "And that is every 50 feet."

**KROUT** "Well, every 50 feet along Broadway, every 40 feet along the residential line."

**GAROFALO** "Okay. I guess that would have to be part of a motion. Or, can we even do that. Okay, we will hear from the applicant."

**GARY WILEY** "I am here on behalf of the applicant. To clarify things, in Item No. 1, if we just scratch the north property line, we are satisfied with that. In No. 2, if we would just stop after the Landscape Ordinance. Period. We are in agreement with that. In planting the trees as required by the Landscape Ordinance along the fence lines."

**WARREN** "That would be on the west wall?"

**WILEY** "That would be on the west wall? "And we are in agreement with Conditions 3,4, and 5 as set out."

**GAROFALO** "Are there any other questions of Gary? Is there anyone else to speak on this item?"

**DON FEY** "Good morning. I am a resident of what to you would be Lot 2, (indicating) right here. It is 4614 South Main. I am also speaking for the owner of Lot No. 1, that is Mr. Gene Stetler, sitting over here, and the owner of Lot No. 3, Dottie Shields, who is ill and couldn't be here today.

I am also a licensed general contractor. I am a custom homebuilder, and occasionally I am a consultant for people in matters regarding property values and issues that affect them. Anyone that knows anything about real estate knows very well that the value of property is primarily a function of location, and the location is not just your address, it is your neighborhood. It is what surrounds you.

In a question of property value, sales appeal and the quality of living in a particular place, when the neighborhood changes, your location has changed. Along with that go all of the associated impacts affecting the value and the appeal of your property, and most importantly, the quality of life in that location. That is why we have zoning. That is why zoning is critical to maintaining property values.

Our values have been increasing in that we have had four houses on this one two block section of Main Street that have been totally rehabilitated in the last few years. So people have been upgrading in there substantially. In terms of our proximity, and bear in mind that I am speaking for the people immediately behind this property to the west. You might think that these adjacent properties are already so close to commercial property that we would have little impact as a result of this change. I want you to understand that the situation is just the opposite.

This is a small pocket of homes. The road goes north two blocks, west a block, south a block. We are kind of closed off, so it is very quiet, it is very private, and it has a surprisingly pleasant environment. As a result, most of the owners are long-term residents and the property that does go on to the market there sells well and at a pretty good price. I might mention that Lot 4 was sold recently, and I think, due to the timing, that the owner of that property is unaware of this zoning procedure. I doubt very much if he would have received notice. It would have gone to the prior owner. It may have been returned back to him, I don't know. That may be an issue that should be considered.

In any event, the property in question here is a thing that buffers our property from commercial development. That is the only thing that keeps our neighborhood quiet and peaceful and keeps our values in tact. I bought my home 6 years ago as an investment, planning to upgrade it and sell it in 2 or 3 years. It has turned out to be a nice enough place to live that I have stayed there 6 years and I am not planning on moving. I did my homework before I bought it and I checked on the zoning of

the adjacent property, especially this to the east because it was undeveloped and I found it was single-family residential. I would consider that a condition of the purchase that I know the neighborhood I am buying in.

I have made a number of improvements accordingly, not just to fix the house up because we were going to sell it, but because I am going to live there. So I have a bay window in the kitchen, I have decks all the way around the back of my house, a landscape pond and a waterfall, a sliding door out of my master bedroom, all with a view of this property that you are talking about making into a car lot. Right now, my back yard is somewhat like a park.

Zoning tends to have a creeping compromise. The property where the Dillon's store is down there was always commercial. You may remember that that used to be the T-Bone Restaurant. There was a club and some other things. Before the Dillon's was built, which, of course, fits the zoning, I had a view of trees in that direction. Now, I have a view of a large block building and a dozen elevated parking lot lights. Nice, bright, amber high-powered lights that shine in my bedroom window at night. Currently, we are wanting to extend that from kind of this way to my bedroom window, to right there (indicating). I don't find that very appealing, from my standpoint. I feel that that is very detrimental to our property.

The position of myself and the owners I represent is not that we want to prevent the owner from using this land, but we do want to prevent him from doing so at the expense of our real estate values and the quality of life in the place we live. He is free to do anything that the zoning permits, which is single-family housing, be it one or a dozen. I am familiar with that, I will help get it platted, I will help him build it, but I totally object to the idea that we change this to a commercial piece of property. As I said, I speak for my neighbors at the same time. We oppose that, even with privacy restrictions."

Osborne-Howes arrived at 11:00 a.m.

**GAROFALO** "Sir, your time is up, do you need more time?"

**FEY** "Yes, I do. About two minutes."

**MOTION:** That the speaker's time be extended for 1 minute.

**FEY** "There is a privacy fence, as described, around the Dillon's store. It doesn't change my view at all. It has no impact on this altitude. I want to tell you that with my experience in real estate and values, that if this property changes hands and follows the course of the application, my property will go down in value about \$10,000, with the privacy wall, with the trees, and things of that nature. That is an impact I am not willing to pay so that someone else can have a car lot.

So we oppose any change from the existing zoning, and I ask the Commission to reject the application without compromise. That pretty well states my case."

**GAROFALO** "Are there any questions of Mr. Fey?"

**JOHNSON** "With your experience, and the comments you have made, even though the owner presently could build a car lot out front in the area along Broadway, and he would have no screening requirements, so you could look at a car lot anyway, that is one scenario that could happen today.

Secondly, you yourself said being a residential owner backing up to this, you have the opportunity of having a wall and the trees, but if the owner left the zoning like it is today, do you think that he could sell some residential lots backed up to a car lot with no screening?"

**FEY** "Possibly not. That makes a difference in whether this is his problem, or he makes it my problem.

**JOHNSON** "I just wondered if you thought he could sell it then."

**FEY** "If you want a given piece of property of a particular kind of zoning and you acquired it that way, then that is what you have to work with. This is passing his problem on to the adjacent property-owners without compensation. I don't consider that just."

**WARREN** "I am afraid what we are going to be faced with, as Commissioners, as a land-use case, and that is what this is, is that this guy has this piece of land that is commercial on three sides, heavy commercial on three sides. I am afraid that we are going to conclude that it is not applicable for single-family.

Now, thinking in terms of a compromise, we have, in the past, required a 20-foot easement that maybe would give you a little denser landscape. Would that, in any way satisfy some of the concerns that you have if some compromise like that were reached?"

**FEY** "I think if there were to be some sort of compromise, I would look for a wall, that rather than being on the property line would be set back substantially from the property line and the trees would be on the west side of the wall rather than the east side. The trees could mask both the wall and the various aspects of the commercial business from the residential property. So I would put the buffer zone between the west property line and the wall."

**GAROFALO** "Are there any other questions? Thank you. Is there anyone else to speak on this case?"

**MICHAELIS** "I have a question for Marvin kind of along that line. Marvin, is that something we could do? That seems to make some sense."

**KROUT** "Yes, it can be done. A 20-foot area is a little bit hard to maintain. There would have to access in there through a gate or something to get in there, and in the past, sometimes owners have said that it is kind of a no-man's land, a little difficult to mow and maintain and it is a place where trash can go, but it has been done in other cases, and so I think it is an option."

**MICHAELIS** "Could it be in the form of a covenant where the adjacent property owners would maintain it and take care of it since it benefits them?"

**KROUT** "We couldn't require, through our zoning that another property-owner maintain someone's property, something would have to be done privately."

**FEY** "I might comment to that that they are mowing it now, so they are already maintaining that area. Only, I wouldn't put that wall 20 foot back, I would put it 50 foot back. If it were 50-foot back, I would have no further problem with it. If we don't have a suitable protection for the value of the property, then I will go as far as I need to go to put a stop to the development. Thank you for your time."

**GAROFALO** "Are there any other questions? Thank you. Is there anyone else to speak in opposition? Anyone else to speak on this item? Okay, the applicant has two minutes for rebuttal."

**WILEY** "In response to moving the wall, we would be willing. There is a 10-foot utility easement along the west property line. We would be willing to set the wall at 10 foot back and do the landscaping, the tree planting on the property to the west of the wall if the owners would be agreeable to that; maintaining the trees and that."

**MCKAY** "What are we going to do about the utilities, Gary?"

**WILEY** "We can't put a wall in the utility easement."

**MCKAY** "I realize that, but you could plant trees on the utility easement."

**WILEY** "Oh, yeah, we could do that. All of the utilities are already in."

**MCKAY** "I know you can do it, but what are the utility companies going to say?"

**WILEY** "I don't think there would be problem."

**MICHAELIS** "They would just tear them out and you have to replace them, they don't care."

**WILEY** "But we would be willing to do that, if that would help."

**MCKAY** "In the past what we have done, we did it at Tyler Road and Central and we also did it out east, was to put the fence on the property line with a 5-foot fence easement, and then we tacked on a 20 or 25-foot landscaping inside the fence, so it keeps the property away. Out west, if you remember, we had 100 foot from the fence."

**KROUT** "It was on Tyler Road. It was a larger tract but we did do a 100-foot landscaping and then the wall. But that was a much larger piece of property in proportion."

**MCKAY** "I understand that. I have no problem with the fence being 10 foot in."

**KROUT** "I think the way to do the wall is to move it 10 feet back."

**WILEY** "Yeah, we would have done that."

**GAROFALO** "So that would be set back how far then, all together, just 10 feet?"

**WILEY** "Ten feet, uh huh."

**PLATT** "Would you agree to put the wall back 20 foot?"

**WILEY** "Would prefer not to. That is given 20 feet by some 400 and some feet. That is a lot of land area. And this property has no access to any public street anywhere. There is a 30-foot access easement through the commercial to the south of this George Addition that provides access to this parcel."

The City Service has a gas line that catty-corners through the northern portion of this particular site. It has a total of a 100-foot setback and easements through there. We will not be on that with the wall."

**KROUT** "Gary, on a buffer, a normal buffer or tree planting is one tree for every 40 feet. Are you able to improve on that any?"

**WILEY** "We would prefer not to. I think there are already some trees back there that we will be subsidizing. We don't plan on taking them out. We have 469 feet, so, one tree every 40 feet would be what, 11 or 12 trees, plus the 6 foot masonry wall."

**WARREN** "There would be nothing prohibiting those property owners from going ahead and planting some cedars along the wall."

**WILEY** "Yeah, and I think Marvin was right on the Dillon's. The Dillon's did do the masonry wall down there, but that was prior to the requirement of the tree plantings at that time."

**GAROFALO** "Are there any other questions of the applicant?"

**OSBORNE-HOWES** "I just have a question about lighting."

(Laughter)

**WILEY** "Somebody already brought that up on your behalf."

**MCKAY** "That is now called the 'Susan amendment'."

**WILEY** "We would be agreeable to the standard lighting, shielding the lights from the residential to the west."

**KROUT** "That is already in the Code. The Code says that light standards should be 1 foot in height for every 2 feet back from a property, but then Central Inspection can make exceptions if they look at the aiming of the light and say that it is not being directed down and then they can permit it to be higher. So there is no real limit on height."

**OSBORNE-HOWES** "So what would be the height that would be allowed then, if we talk about this 10 or 20 foot setback?"

**KROUT** "What I think it means is that they wouldn't be able to put a standard 30-foot light pole in the first 60 feet unless it was done in a way that it was aiming away from the property and not just down lighted."

**GAROFALO** "Are there any other questions? Thank you, Gary. Okay, we will take it back to the Commission."

**MCKAY** "Let me ask this. Do we have the authority, as the Planning Commission to say that their lights will be no higher than a certain height? I thought we had done that in the past."

**KROUT** "We have done that in some cases, said no more than a certain type within a certain feet of the residential property line. No more than 20 feet tall or 16 feet tall, within 100 feet or 200 feet."

**MCKAY** "We do have that right."

**GAROFALO** "That's what I thought. I think we have done 15 feet on a couple of them. Okay. What is the pleasure?"

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The property south and east of the site is zoned "GC" General Commercial and is developed with commercial uses, including auto-related uses. The property north of the site is zoned "LC" Limited Commercial and "SF-6" Single Family Residential and is developed with commercial uses and single family residences. The property to the west of the site is zoned "SF-6" Single Family Residential and is developed with single family residences. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single Family Residential; however, the site is unlikely to develop with single family residences due to its location. The site is surrounded by existing commercial uses on the north, south, and east and has no access to a street without an easement through developed property. Expansion of the existing commercial uses from the east onto the site seems to be a more logical option than expanding the existing residential uses from the north or west onto the site. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions imposed upon the applicant, including the screening wall, landscaping, and the limitation on the proposed uses, should alleviate any potential impacts on the surrounding properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommends that auto-related uses should be guided to areas such as this site where auto-related uses already exist. Impact of the proposed development on community facilities: Development of the site will slightly increase traffic in the area; however, the roadways in the area are sufficient to handle the increase in traffic. Water and sewer service can be extended to the site from adjacent properties. There should be minimal impact on municipal services in the area.) I move that we recommend to the governing body that the request be approved, subject to platting within 1-year and the following conditions in the form of a Protective Overlay:

1. A 6-foot masonry wall running the entire length of the west property line shall be constructed 10 feet east of the west property line. Buffer tree planting between the wall and the west property line shall be in conformance with the Landscape Ordinance.
2. The site shall be developed in accordance with the screening requirements of the Unified Zoning Code and the Landscape Ordinance.
3. Outdoor speakers and sound amplification systems shall not be permitted.
4. The following uses shall not be permitted: adult entertainment establishments, group homes, group residences, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor can be developed and may serve liquor, as long as food is the primary service of the establishment.
5. The following uses shall be prohibited within 200 feet of residentially-zoned property: service stations, convenience stores with gas islands, restaurants with drive-in or drive-thru facilities, and vehicle service or repair uses that have overhead doors facing those districts.
6. Light poles within 20 feet of the west property line shall be limited to 15 feet in height.

**MICHAELIS** moved, **WARREN** seconded the motion.

**MICHAELIS** "I included the Susan Amendment."

**OSBORNE-HOWES** "Well, the Susan Amendment is going to be with a 15-foot height on the lights. We have done that often."

**MICHAELIS** "I would like to ask Gary that question."

**OSBORNE-HOWES** "I just want to be sure."

**WILEY** "For how far, Susan?"

**OSBORNE-HOWES** "Not for everything. I am just looking at the west side."

**WILEY** "Within 20 feet of the west side or something? I think we could live with that and then on up from that point."

**OSBORNE-HOWES** "Yes. Is that all right?"

**MICHAELIS** "That will be in the motion."

**WARREN** "And I will second."

**MARNELL** "And did you make the changes to Section 2 as part of your motion?"

**MICHAELIS** "Yes. The changes that were made on Items 1 and 2."

**PLATT** "I am going to vote against the motion. It seems to me that this is a very difficult case. The kind that comes along every now and then because things evolve rather than get planned in a perfect world. But here we are with a piece of residential property and the change is not just for commercial use, but for a used car lot, right smack dab against residential property. I don't know. And, I can sympathize with the owner in terms of the fact that it is landlocked. It is not going to be used for single-family houses because there is no way to get into it.

On the other hand, it seems to me that because of the difficulty of what is going to happen to that property that it behooves the owner to have made some effort to have worked with the residential area to the west to see how they could work together to make this work. I didn't see any effort being made in that way at all. In fact, I felt a little bit like they weren't interested. It seems to me that it is incumbent upon the owner to give something. You are going to have to give a little bit more than unusual. The idea that 20 feet in terms of some kind of a buffer zone is too much to give turns me off. I don't think this is very good development."

**WARREN** "What do you suggest, George, in the way of a concession?"

**PLATT** "I tried to put 20 feet in there."

**WARREN** "Are you talking about putting a wall forward as we had suggested, and then another 10 feet of landscaping?"

**PLATT** "I would hope so. Move the wall back 20 feet and then the landscaping area by putting the wall and then the residential neighborhood. I certainly would want that if I lived there."

**JOHNSON** "I guess I could look at this same situation, but one block to the west of this, it looks to me like the residential backs up to Light Industrial with no walls, no landscaping, no nothing in there."

**PLATT** "That is correct."

**JOHNSON** "So, I mean the owner of this property has done more than what was required north of him, and south of him. So, I mean I can't totally agree with you George, even though I understand what you are saying."

**GAROFALO** "Is there any other discussion? If not, we have a motion."

**VOTE ON THE MOTION:** The motion carried with 11 votes in favor and 1 in opposition (Platt). Barfield and Carraher were not present.

-----

Lopez left the meeting at 11:15 a.m.

**4a.** **Case No. SCZ-0798** – Derby Recycling and Transfer Station, LLC, applicant (H.D. Mills, agent) request zone change from "RR" Rural Residential and "GI" General Industrial to "LI" Limited Industrial; and

**4b.** **Case No. CU-556** – Derby Recycling and Transfer Station, LLC, applicant (H.D. Mills, agent) request Conditional Use to permit a transfer station on property described as:

Government Lots 3 and 4 and that part of the Southeast Quarter, all in Section 13, Township 29 South, Range 1 East of the 7<sup>th</sup> P.M., lying west of the Westerly right-of-way line of the Atchison, Topeka and Santa Fe Railroad, excepting therefrom the tracts heretofore deeded by deeds recorded in Book 1230 of Deeds at Page 91, and in Book 1467 of Deeds at Page 489 in the Office of the Register of Deeds of Sedgwick County, Kansas, and except that part condemned for highway purposes in Case A-46833 in the District Court of Sedgwick County, Kansas, and excepting therefrom that part platted as Lot 1, Block 1, in Lusk Industrial Addition an Addition to the city of Derby, Sedgwick County, Kansas, and except that part condemned in District Court Case C-26941. Generally located at the southeast corner of 21<sup>st</sup> Street North and 127<sup>th</sup> Street East.

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking to rezone 56 acres from the "RR", Rural Residential district to the "LI", Limited Industrial district to permit a "Recycling Processing Center" and obtain a Conditional Use permit to operate a solid waste "transfer station" on 70 acres (including the previously mentioned 56 acres) located at 91<sup>st</sup> Street South and Buckner (1401 south Buckner). Currently, 14 acres of the 70 acres for which the Conditional Use is being sought are already zoned "GI" General Industrial and is being used for landfill, compost or recycling activities. A portion of the site has a permit from KDHE for construction-demolition debris disposal and composting operations, and is being used for those purposes today. Other portions of the site are currently unused.

Access to the site is provided by both 91<sup>st</sup> and Buckner Streets which are unpaved near the application area. The applicant's site plan depicts two possible sites for the location of the transfer station. The northern site is the applicant's preferred site. A more detailed site plan for the northern site depicts a 12,500 square foot building which would house the tipping floor and office. The scales would be located nearby to the northwest. This building is oriented with its longest axis north to south. Ten visitor-parking spaces are shown on the north side of the building. (County Code Enforcement indicates that approximately 13 spaces will be required for a building the size shown on the detailed site plan.) The remainder of the tract would be used for landfilling, recycling and processing operations.

The applicant indicates that the maximum volume he could hope for is 500 tons per day. He does not expect to receive that volume due to competition and the scale of his operation. If the site did receive 500 tons per day, The applicant anticipates that volume would result in an increase in an average daily volume of 35 to 40 vehicles. (It should be noted that the eastern most portion of the applicant's ownership is not included within the area covered by the applicant's site plan.) Hours of operation are 8:00 a.m. to 5:00 p.m. Monday through Friday, 8:00 a.m. to 3:00 p.m. on Saturday.

Derby's wastewater treatment plant is located to the east, within the city limits of Derby, on residentially zoned land with a special permit for the treatment plant. There is an industrial use to the north, within Derby, which includes scales and office buildings for the landfill and transfer station that the applicant currently operates. The applicant has lost the lease for that property so those improvements will be moved south onto the applicant's new site.

**CASE HISTORY:** In 1985 a request for a Special Use Permit to establish a demolition construction landfill (DR 86-4), and a request to rezone land from "RR", Rural Residential to "GI", General Industrial (SCZ-0542) were withdrawn. In 1986 a Special Use Permit to establish a demolition construction landfill (DR 86-4), and a request to rezone 14 acres from "RR", Rural Residential to "GI", General Industrial were approved by MAPC, denied by the County Commission and then approved by District Court.

This case was originally scheduled to be heard by the MAPC on December 16<sup>th</sup>. However, the Derby Planning Commission were unable make a recommendation at their December 2<sup>nd</sup> meeting, and requested the MAPC to defer the case until they had

a change to obtain additional information. At the December 16<sup>th</sup> meeting, the MAPC deferred the case to their January 13, 2000 meeting. At the Derby hearing on December 16<sup>th</sup>, they recommended:

Approval of the request for "LI" zoning subject to the conditions referenced in the MAPD staff report and the following conditions:  
no trees providing screening for nearby or adjacent properties can be removed; no composting is permitted in the 100 year floodplain;  
no correctional facilities are permitted on the property; testing of groundwater and soil shall be conducted by the appropriate agency.

Approval of the "Conditional Use" request for the transfer station subject to the conditions referenced in the MAPD report and the following conditions: the size of the property authorized for the transfer station is limited to 12 acres; an enclosed storage tank is to be used to contain runoff and monitored by the appropriate agency.

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR", Rural Residential and "M-1", Industrial (Derby); vacant and solid waste landfill / transfer and composting activities, agricultural

SOUTH: "RR", Rural Residential; vacant and residential

EAST: "Derby residential zoning with a special permit; waste water treatment plant

WEST: "RR", Rural Residential; Arkansas River

**PUBLIC SERVICES:** 91<sup>st</sup> Street and Buckner Street are two-lane unpaved roads near the application site. K-15, a divided four-lane facility is less than one-quarter mile to the east, via 91<sup>st</sup> Street. Traffic volumes are not available. City of Derby sewer and water lines exist in Buckner. Staff is contacting appropriate officials regarding any concerns they may have with north bound left turns on K-15 from 91<sup>st</sup> Street.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita/Sedgwick County Development Guide identifies this area as appropriate for agricultural and related uses. The Derby Comprehensive Plan also depicts this area as appropriate for agricultural uses. In 1996, the Unified Zoning Code established solid waste transfer stations as uses conditionally permitted in the Rural Residential and the two industrial districts. Recycling processing centers are permitted in the General Commercial, Central Business, Office Warehouse, Industrial Park, Limited Industrial and General Industrial districts. Facilities built in the Limited Commercial district have 10 conditions to comply with. When recycling facilities are located in the other zoning districts, they have only one condition to comply with: Prior to establishing a public recycling collection station, the operator shall obtain a location or building permit, as applicable, from the Zoning Administrator. Operation of the station shall be subject to approval of the health officer.

Sedgwick County has specific regulations regarding the site design for facilities of this type: access roads are to be paved; on-site roads shall be maintained in good condition; a minimum size of 15 acres is required for a facility designed to receive more than 500 tons per day; transfer stations are to be located 100 feet away from public roads and other property boundaries; 500 feet between transfer station and any building not on-site unless written permission is granted by the nearest property owner, but no less than 300 feet between the transfer station and waste storage areas and the nearest residence or school; the site is to be reasonably screened from adjacent roadways; 80 percent of the surface area not used for parking, ingress/egress or transfer station shall be covered by vegetation or organic groundcover; transfer operations are to occur in an enclosed building (excluding white goods and yard waste); yard waste is not to be accepted at the transfer station; each facility shall have one common gate for all customers; the facility shall be open to all customers for the same hours of operation; an enclosed area available for public education and capable of seating 40 people is required; and provisions for handling banned waste must be made.

Attached is a letter from the Director of Sedgwick County Resources outlining the county's policy towards transfer stations. It indicates that the Board of County Commissioners supports the private ownership of transfer stations, that the number of stations that can be built will be determined by market demand and that there is a need for facilities of this kind throughout the county.

Finally, the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1 year and the following conditions:

- A. The Conditional Use Permit for the transfer station shall apply to the northernmost location and that a legal description describing that location be provided prior to hearing by the governing body. Prior to this request being forwarded to the governing body, the applicant shall submit: a revised site plan that depicts the location of the transfer station and provides more building detail (e.g. size and location of openings on the tipping floor enclosure, public education area), screening plan, general location for each activity and clarification of what is to happen on the eastern portion of the property not included in the site plan.

- B. The Conditional Use for the establishment of a solid waste transfer station shall be subject to all applicable local, state and federal regulations and laws, and prior to beginning operations, all applicable local, state and federal permits shall be acquired.
- C. The use of the site as a solid waste transfer station shall proceed and be maintained in general conformance with the site plan required by this Conditional Use and made a part of this permit. The tipping floor area shall be completely enclosed except for openings with operable doors for loading / unloading and pedestrian / emergency doors.
- D. At the time of platting, the applicant shall submit a drainage plan to the Health Department and to the Sedgwick County Department of Public Works (Derby) for approval. All runoff within the tipping facility shall drain to a holding facility. All outside runoff shall be properly confined, filtered, and/or treated to prevent contamination, as deemed appropriate by the County (Derby).
- E. A landscape plan shall be submitted to the Planning Director for approval prior to issuance of a building permit, indicating the number, location, size and type of plantings and method of watering. Landscaping shall be installed in conformance with this plan prior to operation of the facility and maintained in conformance with the plan.
- F. Temporary outside waste storage of materials shall be stored or confined in a manner that prevents waste from being blown beyond the site.
- G. Outside building walls and roof surfaces shall be predominantly muted in color intensity, with bright white colors limited to a maximum of 10 percent of the total surface area.
- H. No off-site signs are permitted on the property. Building signs shall be limited to a maximum of 10 percent of any wall surface.
- I. Violation of any of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Land on all sides is zoned Rural Residential, residential (Derby) with a special use permit for a waste water treatment plant, or industrial (Derby). There are agricultural, landscape nursery, wastewater treatment plant, the Arkansas River and vacant land uses surrounding the site. The character of the area is a combination of undeveloped, agricultural and industrial uses.
- 2. The suitability of the subject property for the uses to which it has been restricted. The property is zoned "RR", Rural Residential, and "GI", General Industrial with a Conditional Use permit for a landfill. The site is not suitable for residential for residential use given the fact that landfill operations have occurred on the site and due to its proximity to the wastewater treatment plant.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered by the river, creeks and other industrial or agricultural operations. The conditions attached to the approval of this request and the licensing minimize any detrimental effects.
- 4. Length of time the property has remained vacant as zoned. The Rural Residential zoned property is currently vacant. The General Industrial zoned property has been used for landfill since 1986.
- 5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan identifies this area as appropriate for agricultural and related uses. However the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas. This site meets these requirements.
- 6. Impact of the proposed development on community facilities: The site will generate little if any increased traffic over current operations and the demand for municipal services (sewer / water) should be minimal if those services are required.

**MILLER** "This case was heard by Derby approximately a week ago and they were not able to make a recommendation at that point in time. There were some outstanding questions that they felt like they needed more information on, so they deferred action and they have asked me, maybe three times, to defer the case today. The applicant is here and so I advised them that certainly it was within their prerogative to defer the case and to ask you to defer it, but that it was up to you all to decide what you wanted to do."

**WARREN** "I have had a number of people contact me from the Derby area. Let me give you my position on this. I am going to support the deferral, but I think this transfer station could be a tremendously valuable asset to their community and the surrounding area. We have had a real problem out in that southeastern quadrant with people dumping out onto the right-of-way of the township roads. I have a piece of property that runs from 95<sup>th</sup> Street to 103<sup>rd</sup> Street out on Webb Road and we have had as many as five refrigerators. We have had shingles that took three big trucks to haul off, we have had mattresses, we



have had couches. It has been a mess. I have to believe that those people, even though they are unconscionable people, probably, for \$4.00 or \$5.00, would have taken it somewhere and dumped it, had that option been available.

I just want to go on record that I am for it. Secondly, I personally think that if we went out and tried to find a location and say 'what would be the best location, I don't think we would find a better one'."

**MILLER** "Well, you may want to wait until you hear the facts of the case."

**KROUT** "Based on what you know now, prior to any testimony on the public hearing, you may tend to."

**WARREN** "I have had an awful lot of people ask me where I stand and I just want to go on record with where I stand."

**KROUT** "My advice to all of the Planning Commissioners is not to put on record where you stand until after you close the public hearing. I think you will be better off to do that."

**WARREN** "I am going to support the deferral."

**MILLER** "The applicant is here."

**GAROFALO** "Are there there any other questions of Dale?"

**MCKAY** "Is staff asking for a deferral?"

**MILLER** "The way the Code reads, the small city has to be given an opportunity to hear the case. They have had that opportunity but felt like they didn't have all of the information, and I guess as far as the department is concerned, it is okay for the deferral. We aren't fighting a deferral, but feel like it is up to the Commission to decide how you want to handle it."

**GAROFALO** "Before we have a motion, I think we should ask the applicant to come up and respond to this."

**RUSSELL MILLS** "I am with Sanborn and Mills, Chtd., Attorneys. I represent the applicant, who also happens to be in my family. As to the deferral, the one concern that we have is that if it ultimately does come about that this board approves the application and the County Commission ultimately approves it, this transfer station is going to need to be developed and built, and there are several steps that we have to go past here and past the County Commission. We are going to have to have a plat approved. We would have to have our building design approved. There are a lot of things that have to be done.

So, October 1, 2001, we are going to have to have some method of disposal of our solid waste. The County Commission has chosen the transfer station method. So we are going to have to have some transfer stations being built somewhere, so we will take no position on this request for deferral. We are going to leave that up to the wisdom of this body, but we did want to make those comments."

**GAROFALO** "Are there any questions of the applicant at this point? Okay, thank you. Is there anyone else here who would like to speak on this issue? Ma'am?"

**NORMA MOORE** "I am an adjacent property owner. I don't feel that now is perhaps the right time. I would like to go through the Derby Planning Commission first and see if we can get some answers. When we met last with Mr. Mills, there were more questions than there were answers, and we were hoping that tonight he would come with some information. We raised many questions. I am, of course, in direct opposition to Mr. Warren, so I don't feel that now is the best time perhaps for me to raise all of my concerns. I would like to hear what is said tonight and then the next time we come before you, hopefully I can make some informed comments. But I am in opposition."

**WARREN** "Where do you live?"

**MOORE** "I live directly across Spring Creek from this property, to the south."

**GAROFALO** "Are there any questions? Okay, thank you ma'am. Dale, how much of a deferral are we talking about?"

**MILLER** "If you deferred this, it would be heard on January 13. I think that is the next meeting."

**MCKAY** "When is the Derby meeting?"

**MILLER** "Tonight."

**MOTION:** That the item be deferred to the January 13 meeting.

**WARREN** moved, **HENTZEN** seconded the motion, and it carried unanimously (11-0).

-----  
Carraher arrived at the meeting at 11:30 p.m.

5. **Case No. DP-11 Amendment #4** - Via Christi Regional Medical Center, Inc., c/o David Mohr (owners); PEC, PA, c/o Gary Wiley (agent) request an amendment to Parcel 7 of the Tyler Acres C.U.P. to allow Personal Improvement Services and the adjustment of building setbacks along the north boundary lines on 16.10 acres of property described as:

Lot 1, Tyler Acres Sixth Addition, Sedgwick County, Kansas. Generally located north of Central Avenue between Woodchuck Lane and Socora Drive.

**LISA VERTS**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant is requesting an amendment to Parcel 7 of the Tyler Acres C.U.P. to allow a health club (personal improvement service) on a 16.10 acre platted tract of land located north of Central Avenue between Woodchuck Lane and Socora Drive. Parcel 7 is currently limited to those uses permitted in the "GO" General Office district, excluding residential uses. The Unified Zoning Code prohibits "personal improvement services" in the "GO" zoning classification unless a Conditional Use permit is acquired or an amendment is made to the applicable C.U.P.

Additionally, the applicant is requesting the adjustment of the building setback lines along the northwest boundary of Parcel 7 from 30 feet to zero feet to accommodate a building addition on the north end of the building. A recent amendment to the Unified Zoning Code allows waivers or modifications of a C.U.P. setback, including compatibility setbacks, lot coverage, height, parking and/or screening requirements as part of the approval or amendment of a C.U.P. In all cases, the objectives of the Comprehensive Plan must be met, as well as the adherence to good planning practices. The Planning Commission or Governing Body must set forth the specific reasons for such a modification and an explanation of how such modification or waiver meets the criteria and purpose of Section III-C.2.

Surrounding uses to the north and east are single-family residential. The remainder of Parcel 7, together with Parcels 8, and 9 of the Tyler Acres C.U.P., or those parcels that lie between Socora Drive and Woodchuck Lane, are composed primarily of medical offices of the West Wichita Medical Park and miscellaneous retail and commercial uses along Central. Across Socora Drive from the C.U.P. is a large church facility.

Currently, the health and fitness center is owned by Via Christi Regional Medical Center. Originally, it operated as a service to patients of the hospital and was classified as a "medical service" for zoning purposes. Recently, Genesis Health Club leased the facility to operate a Health Club, although Via Christi still offers rehabilitation services at this site. Genesis has intentions of eventually purchasing the property, but because they are not affiliated with a hospital or medical facility the center would be classified as a "personal improvement service", and triggers the need for this amendment.

Genesis has plans to expand the building on the north by approximately 3,200 square feet and into the building setback on the existing C.U.P. Although not part of the C.U.P., the residential lots at the northwest corner of this property and south of Bekemeyer are used as parking for the fitness center, as permitted through an exception approved by the Board of Zoning Appeals on October 26, 1993 (BZA 26-93). The request to reduce the building setback to zero feet applies only to the portion of Parcel 7 that is adjacent to these lots. No parking spaces will be removed with the building addition.

**CASE HISTORY:** The Board of City Commissioners on July 12, 1982 approved the Tyler Acres C.U.P. There have been a significant number of adjustments to the C.U.P., which include the reconfiguration of parcel boundaries, the adjustment of building setback lines, the elimination of residential storage units and the addition of nursing home as allowable uses, and adjustments to sign spacing. On January 8, 1985, the Wichita City Council approved a request for zone change from "GO" General Office to "LC" Limited Commercial for Parcel 8.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-6" – Single-family homes  
SOUTH: "GO" – (south of fitness facility) vacant and medical offices  
EAST: "SF-6" – Single-family homes and church  
      "GO" – Day Care facility  
      "LC" – commercial development  
WEST: "SF-6" – Single-family homes

**PUBLIC SERVICES:**

Municipal services are available to this site. Parcel 7 is accessed from Socora and Woodchuck, both designated as residential streets and used as points of access for other uses in the C.U.P.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for office uses. Although health clubs, which are considered personal improvement services, are a commercial use they are permitted in office zoning as a conditional use where the location and circumstances are appropriate. The Locational Guidelines of the Comprehensive Plan do not specifically speak to such commercial uses in office districts. However, the Plan does state that "development proposals which do not exactly match [the Wichita Land Use Guide map] but reflect market place demands should be given reasonable consideration so long as they do not present extra-ordinary new public/service burdens

on the community." Since this facility is operating successfully as a fitness center, while not under the operation of a medical facility, it seems that there is market place demand for a facility of this type in this neighborhood.

**RECOMMENDATION:** Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. Parcel 7 Proposed Uses shall be revised to include Personal Improvement Service.
2. Building setbacks along the north line of Parcel 7 shall be 30 feet except where adjacent to Lots 3, 4, and 5 of Tyler Acres Sixth Addition to Wichita, Sedgwick County, Kansas, where the building setback shall be zero feet.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This facility has operated in conjunction with the single-family residential neighborhoods to the north and east for several years. The remainder of the C.U.P. to the south is primarily medical offices and commercial. Buffering has been accomplished through masonry walls and landscaping.
2. The suitability of the subject property for the uses to which it has been restricted: Via Christi no longer has a desire to operate this facility. Unless another hospital took over the operation, this use could not continue to operate as a fitness center under the existing zoning and C.U.P. allowable uses. The granting of the Conditional Use will allow Genesis to operate the existing facility on this site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The actual use of the facility will not change as a result of this Conditional Use; instead, ownership and operation of the facility will be through a company with no medical affiliation. Nearby property owners should not see any substantive change on this site. Removing, or waiving the setback requirement along a portion of the north property line will not detrimentally affect property owners to north. The residential property used as parking is within the masonry wall and provides a minimum 50-foot buffer between the building addition and the property to the north.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Zoning Code anticipated this type of use and makes specific provision for it through the Conditional Use application process. The site appears to comply with all the provisions outlined in the code for the intended use. Approval of this request will not be contrary to any Comprehensive Plan policies or guidelines.
5. Impact of the proposed development on community facilities: The continued use of this property should have limited impact on community facilities.

**VERTS** "This request arises because currently the facility, which is in this portion of the CUP (indicating) is owned by Via Christi Medical Services. There was a Health and fitness facility built to be used as a rehabilitation service in conjunction with the Via Christi Medical Center. Via Christi still owns the property, but since that time, Genesis Health Club has taken over a majority of the operation of that facility. When the operation changed hands, it was no longer considered a medical service. It then gets classified as a personal improvement service because the operator is not affiliated with a medical facility. Thus the request for this amendment to the CUP to add those personal care services to the permitted uses for this parcel.

In addition to amending the uses permitted on this parcel, the applicant is also requesting that the building setback along these three residential lots be reduced from 30 feet to 0 feet. I should have prefaced that by saying that these three lots are currently also under the ownership of Via Christi. They have a Board of Zoning Appeals (BZA) Use Exception on them to allow parking for this facility. The wall that is required by the CUP actually extends around and encloses those three lots as well. So reducing that building setback to 0 feet is not out of line with the actual use of this property. CPO did hear this last night and voted 6-0 to approve the application. I will stand for questions."

**MCKAY** "Where is that new addition in relation to this aerial map?"

**VERTS** "It will encompass about half of that north section and a little bit of this corner here (indicating)."

**OSBORNE-HOWES** "So they have a Conditional Permit that allowed them to start on this before we heard it?"

**VERTS** "They got the Conditional Permit, but they also had to post pretty significant bonds that if this Commission decided not to approve it that they would remove what they had done."

**GAROFALO** "Okay. Any other questions? Thanks, Lisa. Agent?"

**GARY WILEY** "I am here on behalf of Via Christi Regional Medical Center, Inc. We are in agreement with the staff comments, and will answer any questions that you might have."

**OSBORNE-HOWES** "Is there a racquetball court in that?"

**WILEY** "No. This is all indoors. This is a one-story weight room, is what it is going to be."

**OSBORNE-HOWES** "My question, really, was about the height."

**WILEY** "It is a one-story height and it will be for weight training."

**MCKAY** "Why ask for a variance on height if it is just one story?"

**WILEY** "What?"

**MCKAY** "Weren't they asking for a variance on the height?"

**WILEY** "No. That is a building setback, John. We just barely clip a 30-foot building setback line next to those three residential lots. It is Lots 3,4 and 5 as shown on your front page. There was a setback there and those lots are being utilized as parking. There are 6 residential lots there that are owned by Via Christi, or the Catholic Diocese."

**GAROFALO** "Are there any other questions? Thanks, Gary. Is there anyone else here to speak in favor of this application? Is there anyone to speak in opposition? Seeing none, we will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: This facility has operated in conjunction with the single-family residential neighborhoods to the north and east for several years. The remainder of the C.U.P. to the south is primarily medical offices and commercial. Buffering has been accomplished through masonry walls and landscaping. The suitability of the subject property for the uses to which it has been restricted: Via Christi no longer has a desire to operate this facility. Unless another hospital took over the operation, this use could not continue to operate as a fitness center under the existing zoning and C.U.P. allowable uses. The granting of the Conditional Use will allow Genesis to operate the existing facility on this site. Extent to which removal of the restrictions will detrimentally affect nearby property: The actual use of the facility will not change as a result of this Conditional Use; instead, ownership and operation of the facility will be through a company with no medical affiliation. Nearby property owners should not see any substantive change on this site. Removing, or waiving the setback requirement along a portion of the north property line will not detrimentally affect property owners to north. The residential property used as parking is within the masonry wall and provides a minimum 50-foot buffer between the building addition and the property to the north. Conformance of the requested change to adopted or recognized Plans/Policies: The Zoning Code anticipated this type of use and makes specific provision for it through the Conditional Use application process. The site appears to comply with all the provisions outlined in the code for the intended use. Approval of this request will not be contrary to any Comprehensive Plan policies or guidelines. Impact of the proposed development on community facilities: The continued use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

**MICHAELIS** "I would like to ask a question for clarification. Is this normal that something can get this far along and they can actually be under construction before the CUP is ever amended?"

**KROUT** "I would say no, it is not normal to get this far, but sometimes putting in a foundation or grading work, but normally not this far. This is a little bit different case because this is actually an approved use already under 'GO' zoning and so it is really only kind of a change in ownership and operation. But normally, no. You would have to have your zoning and this approved in order to get this far in the process."

Barfield arrived at 11:35 a.m.

**MICHAELIS** "So when the construction was started, it was still Via Christi's?"

**KROUT** "I don't know that for sure. Gary."

**WILEY** "I might clarify that a little bit, Jerry. Via Christi did pull the building permit and there was a covenant filed that if this was not approved that Via Christi would take everything back over."

**JOHNSON** "We will need to know farther on the Conditional Use. **Unable to hear because of talking and background noise.**"

**KROUT** "Even without the bonds, it is a risk and the owner is signing them."

**GAROFALO** "Is there any other discussion? Okay, the motion is to approve."

**VOTE ON THE MOTION:** The motion carried with 13 votes in favor. There was no opposition.

-----

6a. **Case No. DP-201 Amendment #4**– Laham development, c/o George Laham (Owner); P.E.C., P.A., c/o Rob Hartman (Agent) request an amendment to Wilson Estates Residential C.U.P.; and

6b. **Case No. Z-3346** - Zone change from "LC" Limited Commercial "B" Multi-Family Residential, and "SF-6" Single-Family Residential; described as:

Beginning at the northwest corner of Lot 1, Block 1, Wilson Retirement 2<sup>nd</sup> Addition to Wichita, Sedgwick County, Kansas; thence N89° 10'54" E along the north line of said addition a distance of 682.12 feet to the northwest corner of Lot 1, Block 1, Wilson Apartments Addition to Wichita, Sedgwick County, Kansas; thence N89° 10'54" E along the north line of said Wilson Apartment Addition a distance of 50.00 feet; thence SO° 54'41" E a distance of 272.00 feet; thence N89° 05'19" E a distance of 105.00 feet; thence SO° 54'41" E a distance of 466.48 feet; thence N77° 55'00" W a distance of 133.42 feet; thence S89° 05'19" W a distance of 430.00 feet; thence S47° 42'41" W a distance of 160.37 feet to a point on a curve in the southerly line of said Lot 1 in Wilson Retirement 2<sup>nd</sup> Addition, said curve being a curve to the left having a radius of 227.71 feet; thence along said curve through a central angle of 14° 51'38" an arc distance of 59.06 feet; thence S89° 10'53" W along the south line of said Lot 1A distance of 531.04 feet to the southwest corner of said Lot 1; thence NO° 42'31" W along the west line of said Lot 1 a distance of 464.86 feet; thence N89° 10'54" E a distance of 410.00 feet; thence NO° 42'31" W a distance of 395.00 feet to the point of beginning. Generally located on the southwest corner of 21<sup>st</sup> Street North and Webb Road.

LISA VERTS, Planning Staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant proposes to amend the Wilson Estates Residential C.U.P. (DP-201) in conjunction with revision of the Wilson Property N.E. Commercial C.U.P. (DP-200). These two C.U.P.s share boundaries to the west and south of DP-200. In general, the applicant proposes to decrease the total acreage of Parcels 8 and 10 (DP-201) by 2 acres (this two acres is to be added to C.U.P. 200 and rezoned to "LC" Limited Commercial) and change the zoning on Parcel 8 from "B" Multi-Family Residential to "GO" General Office to allow for the development of an office park.

As proposed, DP-201 would be reconfigured the boundaries between Parcels 8 and 10 and would add uses to each parcel. Parcel 8 would increase in size from 16.74 acres to 18.09 acres and office uses would be allowed, in addition to the existing residential uses. A maximum of 95,000 square feet of office floor area (±12% FAR) would be allowed on this parcel. Parcel 10 would decrease in size from 18.40 acres to 15.01 acres and 4-plex uses would be added to the existing residential uses. The proposed changes also include the reduction of total dwelling units on these two parcels from 250 to 100 units. The changes in acreage represent an overall decrease in acreage for the C.U.P.

Other proposed changes to DP-201 are primarily clean-up changes to reflect platted lots and implied dwelling units. The maximum dwelling units for Parcels 4 and 7 would decrease to 45 and 47, respectively. The overall density of the C.U.P., if developed with the maximum number of units permitted (782) would be 3.26 dwellings units per acre.

The request would increase the number of access openings to Parcel 8, but would eliminate an access opening from the reconfigured Parcel 10 on 21<sup>st</sup> Street. This would leave two access openings for Parcel 10 on Webb Road.

The development of Parcels 8 and 10 will be a continuation of the development of Bradley Fair and the Wilson Estate property that has taken place over the past ten years. Any new development will follow the same architectural and landscape guidelines that are present in the previous development.

Surrounding land uses for the eastern portion of this C.U.P. are a mix of residential and commercial uses. To the north are single-family homes of the Peppertree subdivision. Currently, Prairie State Bank is the only commercial use on the southwest corner of 21<sup>st</sup> Street North and Webb Road, but other commercial uses are under consideration at this time. One other bank, Commerce Bank, is on the northeast corner of the intersection. The southeast corner is zoned "LC" Limited Commercial, but is currently vacant. Directly west of Parcel 8 is Alterra Assisted Living Center on property zoned "B" Multi-Family Residential. The remainder of this east portion of the Wilson Estates Residential C.U.P. is zoned for single-family homes, but is currently undeveloped.

**CASE HISTORY:** The ½-section between Rock and Webb Roads and south of 21<sup>st</sup> Street North has a 10-year history with the City of Wichita Planning Department that includes two commercial C.U.P.'s (DP-191 & DP-200) and a residential-office C.U.P. (DP-201). Over the past 10 years these C.U.P.'s have changed through various amendments and zone changes, with boundaries and uses shifting between all three.

**DP-191 Amendment #1 & Z-3040 / DP-201 & Z-3037 / DP-200** – On November 5, 1991, the City Council approved an amendment to the commercial C.U.P. (DP-191) to increase the amount of "LC" zoning from 9.4 acres to 12.55 acres. A companion C.U.P. application (DP-200) rezoned 3.1 acres of "LC"-zoned property at 21<sup>st</sup> Street and Webb Road to "SF-6" Single-Family Residential as a trade-off for the 3+ acres increase in the Wilson Property Commercial C.U.P. at 21<sup>st</sup> Street and Rock Road. The amendment to DP-191 increased the potential floor area from 148,500 square feet to 196,350 square feet, based on the then-standard maximum floor are ratio of 0.35.

The City Council also approved the associated residential-office C.U.P. (DP-201), which included approximately 23 acres of "GO" General Office zoning east of the commercial C.U.P., as well as 8.5 acres of "GO" zoning along Webb Road. Both office areas permitted either office development or apartment uses. However, the 23-acre tract near 21<sup>st</sup> Street and Rock Road was limited to a maximum of 242 apartment and a maximum of 100,000 square feet of office uses (without a traffic study showing that higher densities could be accommodated).

DP-191 Amendment #2 & Z-3199 / DP-201 Amendment #1 & Z-3178 – On November 7, 1995, the Wichita City Council approved the second amendment to DP-191 with an associated zone change request for additional "GO" General Office and "LC" Limited Commercial and the first amendment to DP-201 with an associated zone change request for "B" Multi-family Residential for the areas south and east of the existing commercial C.U.P. The amendments increased the "LC" zoning from 13 to 39 acres and relocated the 23 acre office tract further east, increasing the allowable floor area for retail and office uses, adding multi-family uses nearer to Webb Road, office and commercial uses permitted, and made a number of changes to access controls, architectural and signage restrictions, and building height. Again, traffic along Rock Road and 21<sup>st</sup> Street was a main point of contention for staff, but there was no significant neighborhood opposition at the public hearings.

DP-191 Amendment #4 & DP-201 Amendment #2 – These C.U.P. amendments were approved on January 16, 1997 by the MAPC. They combined existing Parcels 1, 2, and 3 into two parcels, reconfigured a common property line shared by DP-191 and DP-201, and allowed banks and financial institutions as a permitted use in Parcel 1.

DP-191 Amendment #6 / DP-201 Amendment #3 & Z-3252 – On October 21, 1997 the City Council approved amendments to these C.U.P.'s that shifted boundary lines between the two along Rock Road. The zone change added more commercial zoning to the commercial C.U.P. south of Bradley Fair Parkway.

#### **ADJACENT ZONING AND LAND USE:**

(For Parcels 8 and 10, only)

NORTH: "LC" and "SF-6" – Wichita Water Department and single-family homes

SOUTH: "SF-6" – Vacant

EAST: "LC" and "SF-6" – Prairie State Bank and Eastminster Presbyterian Church

WEST: "B" and "SF-6" – Alterra Assisted Living Center and Vacant

**PUBLIC SERVICES:** Municipal water and sewer services are available to serve the site. This site has access to 21<sup>st</sup> Street North and Webb Road, which are arterials. Traffic volumes (1997) for 21<sup>st</sup> Street North, west of Webb road, and Webb road, south of 21<sup>st</sup> Street North are 9,748 Average Daily Trips (ADTs) and 8,456 ADTs, respectively. The 2030 projected volumes for these two stretches of roadway are 21,000 ADTs and 12,000 ADTs, respectively. Additionally, Parcel 10 will have access to Wilson Estates Parkway, a collector street that will eventually connect with Webb Road

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for low and high density residential uses. Although not identified as appropriate for office uses in the 1996 Land Use Guide, office development on this property does not go against the Locational Guidelines of the Comprehensive Plan. The guidelines state that office uses should be located adjacent to arterial streets and that low-density offices uses (this project being one) can serve as transitional land use between residential uses and uses of higher intensity.

**RECOMMENDATION:** Planning Staff is in general agreement with the proposed amendment and zone change. However, there are several staff recommendations to be made, generally associated with access to the reconfigured sites.

The applicant is requesting an additional opening on 21<sup>st</sup> Street for the expanded Parcel 8. Both Planning Staff and Traffic Engineering feel that one opening is sufficient and this opening should line up with Greenleaf, a residential street and access point for Peppertree subdivision. Staff also feels that although Parcel 8 may not be developed for apartment, townhouse or retirement center uses, the 40-foot landscape buffer should be required as a continuation from Alterra Assisted Living Center to the west and as a buffer for residential properties to the north. In an effort to be a "good neighbor" the applicant, in conversations with surrounding property owners, has agreed to a 90-foot setback for any structure that fronts 21<sup>st</sup> Street and that any structure within 300 feet of the north property line shall be limited to one story. Additionally, the developer also agreed to providing left turn lanes for east and west bound traffic and a deceleration lane at the single access point that is opposite Greenleaf Street. To accommodate these improvements, the applicant will be required to dedicate 10 feet of additional street right-of-way along the portion of Parcel 8 that has frontage on 21<sup>st</sup> Street.

In a preliminary site plan showing anticipated development on Parcels 8 and 10, the applicant shows a point of access to Parcel 8 from the southeast corner of the parcel through Parcel 3 of Wilson Property N.E. Commercial C.U.P. 200. This access point would be a two-lane out/one lane in driveway with shared access to Parcel 3 and would require off-site signage for the office park (Parcel 8). The Unified Zoning Code states that no off-site signs shall be permitted in any C.U.P. (Section 3-C.2.b.(1).b)), but the sign could be placed on any other parcel in the same C.U.P. Any variation of this policy would require approval of a variance through the Board of Zoning Appeals.

Currently, Parcel 10 has 2 access openings along Webb Road. Although preliminary plans for 4-plex townhouse development on this parcel show no access onto Webb Road, Planning staff and Traffic Engineering suggest limiting access to one point. Currently there is unlimited access at the south boundary of Parcel 10 onto Wilson Estates Parkway, a collector street that runs through the entire C.U.P.

For improved access to Parcel 10 and the remainder of the C.U.P., staff recommends that left turn lanes in both directions be constructed on Webb Road at 19<sup>th</sup> Street/Wilson Estates Parkway. The applicant's cost would be limited to the cost of building the northbound left turn land and transition. To accommodate improvements to this intersection, and to be synchronous with the commercial property to the north, the applicant will need to dedicate an additional 10 feet of street right-of-way on all frontage with less than 60 feet of half-street right-of-way. Additionally, to facilitate an acceleration lane exiting from Wilson Estates Parkway south onto Webb Road, the applicant will need to dedicate an additional 10 feet of street right-of-way for the north 200 feet of frontage along Parcel 11, which shall taper back to the 50-foot half-street right-of-way.

Because most of the parcel boundaries are being adjusted in this northeast portion of this ½-section, re-platting will be required. This shall include the Wilson Retirement 2<sup>nd</sup> Addition, Wilson Apartments Addition, and the Webb Road Commercial Addition. Dedication of street rights-of-way and guarantees for driveway and street improvements shall be synchronous with platting, which will be required to take place within one year of approval of the amendments and zone changes.

Based upon information available prior to the public hearing, planning staff recommends as follows:

- A. APPROVE the zone change from "SF-6" Single-Family Residential, "B" Multi-Family Residential, and "LC" Limited Commercial to "GO" General Office, subject to replatting within one year.
- B. APPROVE Amendment #4 to DP-201, subject to the following conditions:
  1. Parcel 8 shall be limited to one access driveway along 21<sup>st</sup> Street North no closer than 320 feet to the east parcel boundary and in line with Greenleaf Street to the north of 21<sup>st</sup> Street.
  2. Parcel 8 shall include a 40-foot landscape buffer along the 21<sup>st</sup> Street frontage with any use permitted.
  3. Structures on Parcel 8 within 300 feet of the north property line shall be limited to one story. Structures may be two stories on the remainder of the parcel.
  4. Parcel 8 shall include a 90-foot building setback along the north boundary and 21<sup>st</sup> Street frontage.
  5. Traffic improvements to the driveway intersection of Parcel 8 shall include a deceleration lane for eastbound traffic and left turn lanes for east and west bound traffic for entrance into the parcel and the residential subdivision north of 21<sup>st</sup> Street. Dedication of 10 feet additional street right-of-way along the north boundary of Parcel 8 shall be required to facilitate these improvements, to be handled at the time of re-platting.
  6. Offsite signs shall be permitted for Parcel 8 only through a variance issued by the Board of Zoning Appeals.
  7. Parcel 10 shall be limited to one access driveway along Webb Road.
  8. When warranted, traffic improvements to the intersection of Wilson Estates Parkway (19<sup>th</sup> Street North) and Webb road shall include a deceleration lane for southbound traffic turning right onto Wilson Estates Parkway and a left turn lane for northbound traffic entering onto Wilson Estates Parkway. At the time of re-platting, the applicant shall submit a guarantee ensuring these future improvements, including a transition north of the intersection, if necessary.
  9. At the time of re-platting, the applicant shall dedicate an additional 10 feet of street right-of way along the east boundary of Parcel 10 for all existing frontage with less than 60 feet of half-street right-of-way.
  10. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body. Any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development
  11. Any major changes in the development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  12. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
  13. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The ordinance establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.

14. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This is a developing area with a large percentage of still-vacant land. There are significant low-density residential uses to the north, south and west. There are large apartment complexes past the intersection and to the east. This development would act as a transition area between commercial and multi-family residential uses to the east and single-family residential to the north and west
2. The suitability of the subject property for the uses to which it has been restricted: The subject property could be developed as presently configured for multi-family residential or retirement center as it is currently zoned for.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request will have little if any detrimental impact on nearby property. Measures are being taken to maintain sufficient access to surrounding residential areas.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide to the Comprehensive Plan identifies commercial uses at the southwest corner of 21<sup>st</sup> Street and Webb Road with high-density residential areas buffering low-density residential areas to the west and south. Although the Land Use guide does not project commercial uses farther west than 600 feet from the intersection, it does suggest some type of buffering. With restrictions on architectural design, lighting, signage, setbacks, and building heights as indicated in the C.U.P. and proposed by the developer, the development would be in conformance with the recommendations of the Comprehensive Plan for buffering commercial uses from residential and other non-residential uses.
5. Impact of the proposed development on community facilities: The change in use and configuration will not significantly increase proposed traffic counts for the intersection of 21<sup>st</sup> Street and Webb Road.

**VERTS** "First, I would like to say that item 6a. and 6b. in conjunction with 7a. and 7b. will be discussed, both through my presentation and through the applicant's presentation as one large project."

- 7a. **Case No. DP-200 Amendment #1** – Laham Development, c/o George Laham (Owner); P.E.C., P.A., c/o Rob Hartman (Agent) requests an amendment to Wilson Property N.E. Commercial C.U.P.; and
- 7b. **Case No. Z-3346** – Laham Development, c/o George Laham (Owner); P.E.C., P.A., c/o Rob Hartman (Agent) requests zone change from "LC" Limited Commercial and "SF-6" Single-Family Residential on property described as:

C.U.P.

A tract of land in the NE 1/4 of Section 8, T27S, R2E of the 6<sup>th</sup> P.M., comprised of a portion of Wilson Apartments Addition and Webb Road Commercial Addition to Wichita, Sedgwick County, Kansas, more particularly described as follows: Beginning at the N.E. corner of Lot 2, Block 1 of said Webb Road Commercial Addition; thence along the east line of said Lot 2, SO° 54'41"E a distance of 175.00 feet; thence SO9° 26'31"E 101.21 feet to a point 60.00 feet west of the east line of said N.E. 1/4; thence parallel with the east line of said 1/4 section, SO° 54'41"E a distance of 438.99 feet; thence S89° 10'54"W a distance of 290.00 feet; thence NO° 54'41"W a distance of 467.09 feet; thence S89° 10'54"W a distance of 105.00 feet; thence NO° 54'41"W a distance of 262.00 feet to a point 60.00 feet south of the north line of said 1/4 section; thence N89° 10'54"E, parallel to the north line of said section a distance of 105.02; thence S82° 17'15"E a distance of 101.12 feet; thence N89° 10'54" a distance of 175.00 feet to the point of beginning. Said area containing 5.14 ± acres.

Zone Change

Commencing at the northeast corner of Section 8, Township 27 south, range 2 east of the 6<sup>th</sup> P.M.; thence SO° 54'41"E along the east line of said section 8 a distance of 600 feet; thence S89° 05'19"W a distance of 50.00 feet to the point of beginning; thence SO° 54'41"E along the east line of Wilson Apartments Addition to Wichita, Sedgwick County, Kansas, a distance of 187.77 feet; thence S89° 05'19" W a distance of 300.00 feet; thence NO° 54'41"W a distance of 187.77 feet; thence N89° 05'19"E a distance of 300.00 feet to the point of beginning. Containing 1.23 acres more or less. Generally located on the southwest corner of 21<sup>st</sup> Street North and Webb Road.

**BACKGROUND:** The applicant proposes to amend the Wilson Property N.E. Commercial C.U.P. (DP-200) in conjunction with revision of the Wilson Estates Residential C.U.P. (DP-201). These two C.U.P.'s share boundaries to the west and south of DP-200. The applicant proposes to exchange approximately 0.2 acres of property zoned "LC" Limited Commercial along the west boundary of DP-200 with approximately 2 acres of property in DP-201, which is zoned "LC" Limited Commercial and "SF-6" Single-Family Residential; approximately 1.8 acres of which will be rezoned to "LC". This "swap" of property will enlarge the Wilson Property N.E. Commercial C.U.P. at its west and south boundaries and increase the total acreage of DP-200.

A recent Administrative Adjustment to DP-200 shifted the boundaries between Parcels 1 and 2 to the west by 30 feet. It also reconfigured the boundary between Parcels 2 and 3 to allow for the enlargement of Parcel 2. The building setbacks were adjusted to match the reconfigured boundaries, with the building setback along the west boundary of Parcel 2 being reduced to 5 feet from 15 feet. Additionally, access control along 21<sup>st</sup> Street North and Webb Road was shifted in accordance with the



revised property lines, which in turn shifts the 21<sup>st</sup> Street opening to Parcel 2 farther away from the intersection than originally permitted. Because of the close proximity of the access opening of Parcel 2 to the intersection, staff recommended that the applicant submit a guarantee for the future construction of a left turn medial if needed. The changes to access control along Webb Road shifted the allowed opening for Parcel 2 from 100 feet to 250 feet from the intersection and removed a joint opening, leaving only one opening for each of Parcels 2 and 3. This Adjustment left an "odd-shaped" Parcel 3, but it was done in anticipation of this Amendment to DP-200, which enlarges Parcel 3, making it a buildable lot and parcel.

Both the Administrative Adjustment and this Amendment were proposed to allow for a Walgreens to be developed on Parcel 2 of DP-200. Because Walgreens required more acreage than was existing on Parcel 2, it required enlarging, which left Parcel 3 as an unbuildable lot. The exchange of acreage from DP-201, Parcel 10, and the rezoning of that property allows for commercial development on a buildable Parcel 3.

This request would increase the number of access openings along Webb Road, specifically allowing for two openings to Parcel 3, in addition to the existing opening for Parcel 2.

The surrounding land uses outside of this C.U.P. include the residential C.U.P. (DP-201) to the west and south, part of which is proposed to be developed as a low-density office complex, and residential uses to the north. Property to the immediate east and across Webb Road is still vacant at this time, but zoned "LC" Limited Commercial and "TF-3" Two-Family Residential. Beyond these corner properties are large apartment complexes. Directly south of this C.U.P. property is zoned "SF-6" Single-Family Residential, but is currently being proposed as 4-plex townhouse development, which is permitted under the existing C.U.P. (DP-201).

**CASE HISTORY:** The Wilson Property N.E. Commercial C.U.P. (DP-200) is part of a larger commercial, office, and residential development that encompasses the entire ½-section between Rock and Webb Roads and south of 21<sup>st</sup> Street North.

DP-200 Wilson Property NE Commercial CUP was approved by the City Council on November 5, 1991 in conjunction with an amendment to DP-191 (Wilson Property Commercial C.U.P.) and the adoption of DP-201 (Wilson Estates Residential C.U.P.) The adoption of DP-200 reduced the amount of "LC" Limited Commercial zoning on the corner of 21<sup>st</sup> Street and Webb in exchange for added "LC" zoning in DP-191 along Rock Road.

This property was platted as Webb Road Commercial Addition in 1996.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC" – Wichita Water Department  
SOUTH: "SF-6" – Vacant  
EAST: "B", "TF-3", and "GO" – Vacant  
WEST: "B" and "LC" – Vacant

**PUBLIC SERVICES:** This site has access to 21<sup>st</sup> Street North and Webb Road. Traffic volumes (1997) for 21<sup>st</sup> Street North, west of Webb road, and Webb road, south of 21<sup>st</sup> Street North are 9,748 Average Daily Trips (ADTs) and 8,456 ADTs, respectively. The 2030 projected volumes for these two stretches of roadway are 21,000 ADTs and 12,000 ADTs, respectively.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for commercial and high density residential uses. The commercial locational guidelines of the Comprehensive Plan recommend that commercial sites be located adjacent to arterials and in areas where traffic patterns, surrounding land uses and utilities can support such uses. Convenience centers, such as the one proposed with this application, are expected to develop at one or more corners of arterial intersections. Also appropriate are arterial/collector street intersections where proper turn lanes are in place or planned, in order to be more accessible to the residents of the immediate neighborhood served by the collector.

**RECOMMENDATION:** Planning Staff is in general agreement with the proposed amendment and zone change. However, there are staff recommendations to be made with regards to access control.

The applicant proposes to increase the number of access driveways for Parcel 3 from 1 to 2. Planning Staff and Traffic Engineering feel that one access point is sufficient for this 365 feet of frontage. There is a cross-lot access agreement between Parcels 2 and 3 and the proposed driveway for Parcel 2 is in close proximity to the north boundary of Parcel 3. This should provide sufficient circulation for both parcels.

Based upon information available prior to the public hearing, planning staff recommends as follows:

- A. APPROVE the zone change from "SF-6" Single-Family Residential to "LC" Limited Commercial, subject to replatting within one year.
- B. APPROVE Amendment #1 to DP-200, subject to the following conditions:
  - 1. Parcel 3 shall have one access point along Webb Road.

2. The applicant shall include a provision for cross-lot access between all parcels of the C.U.P. Through this agreement access for Parcel 2 would be a joint access for Parcel 3.
3. The applicant shall dedicate, at the time of re-platting, an additional 10 feet of street right-of-way as indicated on the C.U.P. along the south  $\pm 297$  feet of the east boundary of Parcel 3 and along the west 30 feet of the north boundary of Parcel 1.
4. The applicant shall revise the C.U.P. to conform to the Administrative Adjustment dated December 1999, specifically the adjusted building setback (to 5 feet) on the west boundary of Parcel 2.
5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body. Any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
6. Any major changes in the development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included with the C.U.P. does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
8. All property included within this C.U.P. and zone case shall be re-platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The ordinance establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
9. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This is a developing area with a large percent of still vacant land. There are significant low-density residential uses to the north, south and west. There are large apartment complexes past the intersection and to the east, all of which would support a commercial convenience center at the intersection of 21<sup>st</sup> Street North and Webb Road
2. The suitability of the subject property for the uses to which it has been restricted: Currently, the property at the corner is zoned "LC" Limited Commercial and is part of the standard 600-foot commercially zoned corners that are present at the perimeter of the City of Wichita. This corner can currently be developed for commercial uses; this application simply extends the current zoning by approximately 400 feet to the south.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The addition of 16,000 square feet of commercial uses at this corner, in light of use changes to the immediate west and south, should not have a significant impact on traffic or circulation for the intersection.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The conformance with the spirit and intent of the Comprehensive Plan was established when the majority of the property was rezoned to "LC" in the early 1960's. The development proposed conforms to the development objectives of the Comprehensive Plan, which recommends that commercial sites be located at arterial intersections.
5. Impact of the proposed development on community facilities: The addition of this commercial zoning and development should not have a more significant impact on traffic than is already projected from the uses allowed in the existing C.U.P.

**VERTS** "Speaking specifically to DP-201, the applicant is requesting to reconfigure the boundaries between these two parcels. The existing boundary is this line here that gives this parcel down here access to 21<sup>st</sup> Street. Those boundaries will shift between each other to this boundary line here (indicating), and then, like I said, this parcel here will be rezoned to General Office.

On the amendment to the CUP, we are adding office uses to this parcel. Right now, the uses on the CUP are residential, multi-family, apartment, townhouse, and retirement facilities. On the new Parcel 10, the request is to add a four-plex use. Currently, uses allowed, even though this is zoned 'SF-6', are apartments, town homes, and retirement facilities.

The request adds another access opening to Parcel 8 along 21<sup>st</sup> Street, but it also reduces the access to Parcel 10, which, because of this long strip here, they had an access point here (indicating). So that access point is being reduced, and the applicant is request two openings on this portion of Parcel 8. As you are all aware, there is an extensive case history on this entire half-section. I have tried to outline that on the staff report.

First, I should say that we are in general agreement with both the zone change and the boundary shift, but there are some specific issues to DP-201, that we have addressed in the staff report. Specifically, we would like to reduce the number of openings on this boundary here to one opening and that one opening should be in alignment with Greenleaf Street across the street in the Peppertree, Bent Tree and Greenleaf Subdivisions. This is their access point to those three neighborhoods.

Also, the CUP currently allows for two openings, two access points, along this portion of Parcel 10. We would like to reduce that to one, primarily because this is a Collector Street (indicating). It is not shown here because it hasn't been put in yet, but on the CUP, there is a Collector Street, Wilson Estates Parkway, that runs through this entire CUP and exits out onto Rock Road. So there is complete access available to this property along this other boundary of Parcel 10.

The applicant had a neighborhood meeting with the neighbors north of 21<sup>st</sup> Street, approximately 2-1/2 weeks ago. Out of that meeting came several comments by the neighbors. Those comments by the neighbors were incorporated into the staff report that you see before you. They included, first of all, the access point here being lined up with Greenleaf. The applicant also agreed to providing left-turn lanes both into this proposed office complex and left-turn lanes into the residential property to the north. In addition, there will be decel lanes for eastbound traffic.

Out of that meeting, also, the property-owners to the north and the applicant agreed that there will be no two-story buildings that front on 21<sup>st</sup> Street, so we put the stipulation in the conditions that any building within 200 feet, although we do say 300 feet in the staff report, we are willing to adjust that to 200 feet, after speaking with the applicant and the neighbors. There will be no two story buildings within 200 feet of this property line, and there will be a 90-foot setback of all buildings fronting on 21<sup>st</sup> Street. That is essentially in line with the Prairie State Bank that exists on the commercial CUP.

**GAROFALO** "Was there an agreement between the neighbors and the applicant on the one access?"

**VERTS** "Yes. There was an agreement to the one access. There was some discussion at the CPO meeting about offsetting. One of the neighborhood representatives from one of these three developments here (indicating) thought that it would be better offset, and the discussion was made that perhaps those three neighborhood representatives could get together with Traffic Engineering and Planning and the developer, to ascertain whether that would be the most viable use of that access point. It is staff's opinion, as well as Traffic Engineering, that it is much safer to align those access points up and have the dual left-turn lanes coming into north and south, rather than having an offset access point and having colliding left turns in the center."

**WARREN** "Was there a general agreement on that 90-foot set-back?"

**VERTS** "Yes. As far as I am aware, the neighbors that were at the CPO meeting were in general agreement with the conditions that were presented at the CPO meeting.

(Slides presented here).

"The site plan submitted by the applicant shows the proposed office park on Parcel 8 with various lots and potential assisted living use remaining on that Parcel 8. The proposed use for Parcel 10 is a four-plex complex of about 80 units. One other thing that the amendment does to this entire CUP is that the applicant is allowed 250 units in combination on these two parcels. The amendment limits that combined residential units to 100, essentially just to accommodate this four-plex, so no residential units would be allowed if these were indeed built out as proposed.

I should also note, and we may come back to this, the applicant proposed a drive-way exiting onto Webb Road for this office complex. That drive-way is actually through the proposed boundary of the DP-200 commercial property. What we would like to propose is that the amendment be amended to exclude 50 feet of the proposed boundary for DP-200 to allow that drive-way and to allow a sign for the office complex. Otherwise, we would be looking at the situation of a off-site sign and further public hearing through the Board of Zoning Appeals to allow that. We could simply amend the amendment and not include this 50-foot portion into the DP-200 CUP. Staff is in support of this driveway access. It provides good circulation through the office complex.

Other improvements as recommended by the staff report include a left-turn lane into this Wilson Estates Parkway. You can see this runs through the entire CUP and out to Rock Road. A left-turn lane into the Wilson Estates Parkway and a decel lane to accommodate traffic flow in here.

I am going to go on now with DP-200 at this time. This is the proposed commercial CUP, again excluding the 50 foot down here that would be for the drive-way, into DP-201. There is an administrative adjustment currently in the works on this CUP to allow a partial boundary shift between Lots 1 and 2 and to enlarge Parcel 2 to accommodate this commercial development. As it stands right now, before this amendment would go into place, DP-200, the commercial corner, cuts off about right here.

Specifically to DP-200 and the zone change there, again staff is in general agreement, except for access along Parcel 3, along Webb Road. The applicant is requesting two points of access. Staff and Traffic Engineering feel that one access point for Parcel 3 would be sufficient to provide adequate circulation in light of the fact that there is cross-lot access between Parcel 2 and Parcel 3, and there is an access point very close to the southern boundary of Parcel 2, which would facilitate movement into Parcel 3. In addition to the drive-way, as suggested for Parcel 8 that would also have access into Parcel 3.

On the conditions, back to DP-201. I have gone through most of those and again, I would like to amend Condition No. 3 to read 200 feet instead of 300 feet. We still would require the 40-foot landscape buffer along 21<sup>st</sup> Street and we would limit the access driveway to one point of access for Parcel 8. The building setback would be 90 feet along 21<sup>st</sup> Street feet for Parcel 8.

Traffic improvements I have gone over, both for 21<sup>st</sup> Street and for Webb Road. We are requiring, on both of these zone changes, for replatting of the entire area, since obviously we are talking about a lot of boundary shifts, a lot of access changes. I am sure there are lots of questions, so bring them on."

**MCKAY** "I guess you are changing from two accesses to one along Webb Road. How many acres of ground are we talking about that this one access be providing for?"

**VERTS** "Do you mean on the commercial CUP for that Parcel 3?"

**MCKAY** "Yes."

**VERTS** "It is just under two acres. The square footage for development in there would be about 17,000 square feet as stated by the applicant. There are potentially four occupants."

**MCKAY** "How many feet of frontage are we talking about along Webb Road, under the new proposal?"

**VERTS** "About 360."

**MCKAY** "Okay, thank you."

**WARREN** "And at that point, you are saying one opening for that 359 feet?"

**VERTS** "Yes."

**WARREN** "Okay. And then there will be one opening that goes to a street, and that would be to the south of there?"

**VERTS** "It would be one opening that would go to a driveway. But not in addition. Let's go back to the site plan. This is the proposed site plan. This is Parcel 3. As you can see, this is the proposed location of a driveway for this corner development. There is another driveway here, and another one at the southern boundary of that Parcel 3. This is a dual driveway, both accessing this commercial development and the office complex. We are suggesting eliminating this driveway and obviously reconfiguring the parking stops here to allow for both access in here and to the south. Potentially, this could be moved to the southern edge of that parcel as well to make it a little more conducive to both lots."

**OSBORNE-HOWES** "So what you are saying is that right in there there are two openings and you are wanting to reduce those to one?"

**VERTS** "There are actually three openings along the entire edge of this CUP and we would like to reduce that to two. One per parcel."

**MCKAY** "Has anybody talked to the bank to see if they agree with this?"

**VERTS** "It is my understanding that the bank has been in support and has had conversations with everything that is going on here. When this boundary shifted between Parcel 1 and 2 towards the bank, they acquired an additional 30 feet as per this amendment. That additional 30 feet accommodates their parking needs for what was reduced from the boundary shift between the two. And they are signed on as an applicant."

**KROUT** "They did sign as an applicant. They had to because we will be changing parcel lines."

**GAROFALO** "Are there any other questions? Lisa, we are talking about two accesses in addition to the street there?"

**VERTS** "I'm sorry, what street?"

**GAROFALO** "Well, that one up north..."

**VERTS** "Oh, this driveway. There would be one access point in addition to this driveway, but this driveway also facilitates access into the parcel."

**GAROFALO** "Okay."

**VERTS** "I should also say the CPO Council 2 did hear both of these cases Monday night. There was significant discussion and a lot of the things that were stated in the neighborhood meeting were also reiterated here. It is my understanding that for the most part, everybody was in agreement with the staff comments that were put together after their neighborhood meeting."

**GAROFALO** "Okay. Are there any other questions? Let's hear from the applicant then."

**GEORGE LAHAM** "I am with the Laham Development Company. We are the developers of Bradley Fair and Wilson Estates. I will try to keep this brief, but I do want to go back a little bit on a few things that have been accomplished since the last time we were here."

You probably can't see this real well, but you can maybe follow above. This is Rock Road; 21<sup>st</sup> Street; Webb Road; and Bradley Fair Shopping Center. This is Bradley Fair Parkway. We have now completed the south wing of the retail space, which has Howard's Uptique; Noodle Caboodle; and Gateway Computer in it. We still have a couple of tenants we are building out for, but the building itself is complete. We have also completed a building next to Jason's Deli. A 9,000 foot retail building and we are just finishing the plaza area that has the landscaping, the fountain that tiers down to the lake that I have been telling this Commission about for four years that we are going to do. It is just nearing completion now.

As you might recall, we left a small island out here in this 4-1/2 acre lake that is overlooked from the plaza area and as you drive through Bradley Fair Parkway, the island has about 18,000 feet, and we just built two waterfalls out of stone, one that falls towards the plaza area and one that falls away from the plaza area. It is kind of interesting, we just brought in 92 tons of stone to build those two falls and brought in about 2,000 plants and trees. If you haven't been out to see it, it is kind of neat.

Also, the Hilton Garden Inn at the north end of our lake is under construction. It is going to be complete probably in late May. It has 103 rooms with a little conference center that overlooks the lake from down here. It is a 3 story structure, and of course, it will be in keeping with the rest of Wilson Estates, architecturally, and in signage and landscaping.

We are getting ready to start a new building. This is Bradley Fair Parkway. The new building is along Bradley Fair Parkway. It is going to have a new restaurant in it, a breakfast, lunch restaurant. We need some restaurants in the area, so we thought we would put one in. (Laughter). This is the office park, which has moved very quickly. If you haven't seen it, it has come out very nice. There are four buildings complete to date and occupied, and there is room for one remaining building. Hopefully that will be started here before long. All of the green space, the landscaping, the waterways, and the pedestrian ways are now all complete.

Moving into the residential area, which is all illustrated in yellow, we have opened two areas, the first being the Belmont, which is 45 lots. It is a gated community. All of the streets are in, the entry landscaping and monuments are all in. There are people living out there; probably about 10 or 12 homes that are either under construction or occupied.

The second area is called the Preakness and the streets are in there, also. There are 45 or 50 lots in there, and there is probably about the same, 10 or 12 homes either under construction or occupied. All of the landscaping and waterways are in this 18 acre greenbelt that we brought in.

Here we are at 21<sup>st</sup> and Webb Road. There is an office park in here, retail in the corner, next to the bank. The bank is in full agreement on our project today. There is additional retail here. We have already talked about the four-plexes here. As far as these access points go, we had two access points along the multi-family and three along here. We had a total of five, and we are asking to reduce that down to three. If it works out to where we only need two, we will use two. If we need three, we would like to be able to use three. We would just like to have a little bit of flexibility to see what really works out best for the traffic circulation around here. We don't know that at this point, since these buildings are not fully designed or constructed.

As far as the access goes along here, across from Greenleaf, it is staff's recommendation, and I am in full agreement, that this access point should be lined up with Greenleaf, but I have talked to a lot of our neighbors and they do have concerns about whether they want this lined up or not. I think once they meet with Traffic Engineering, we will get them to the point where they will agree with us that that is where it should be. I did agree, at the CPO meeting, to organize a meeting with staff and representatives from each of the three homeowners' associations and myself to all get together, talk about it, and just see what they want to do. But they need a better understanding of the implications of lining it up or not lining it up. We have also agreed to do the decel lanes and the left-turn lane into our parcel, which we are required. We have also agreed to dedicate additional ground and build a left-turn stacking lane for the homeowners' in Greenleaf, because right now they come east on 21<sup>st</sup> Street and they cannot get out of through traffic to make left turns. So they are along the way of traffic along here and it is pretty dangerous, and as traffic gains, it will be. So we are going to build these lanes at our cost. I think that pretty much covers the issues. Architecturally, signage and landscaping will all be in keeping with what we have done in the past out here."

**GAROFALO** "Okay. Are there any questions of George?"

**WARREN** "Then the only question you have that would be contrary to what staff is recommending is the additional opening on Webb? Otherwise you are agreeing with staff comments?"

**LAHAM** "That is correct, and the neighborhood is in agreement with it. I think we are in full agreement."

**GAROFALO** "George, there is a lot of talk here in this CPO report about apartments and concerns about apartments just south there. Is that where the apartments would be?"

**LAHAM** "Yes. What we have proposed right now, we are under contract with a group out of Kansas City that wants to do condominiums. They would be individually owned; they would be \$140,000 to \$180,000 approximately. They are in a four-plex format. They are 1200, 1400 and 1600 square feet, two car garage. That is what we have proposed right now. If not, the CUP still allows us to do apartments, but instead of 250, it only allows 100. I am not sure that you could put 100 on there, but that is the way the CUP reads."

**GAROFALO** "And in your conversations with them, the neighbors are in agreement with the condos?"

**LAHAM** "The neighbors are in agreement with the condos. We had one person that would still like us to completely eliminate apartments since apartments were just built to the east of us, but that probably isn't going to happen."

**PLATT** "Waterfalls are nice, but is there anyplace in all of this development where I could buy a toaster?"

**LAHAM** "We do have toasters. Williams-Sonoma."

**PLATT** "Seriously, going back to how many openings you requested, what staff suggested, and what you are willing to compromise on. How many openings are you requesting for the total strip along Webb Road?"

**LAHAM** "We are requesting three in 700 feet."

**MCKAY** "Let me follow up on that. Show me where you are talking about. That drawing only shows three. I am looking at what you have here, you originally had five. I don't understand the controversy."

**LAHAM** "All right. Right now, we had three openings allowed in the commercial area. We had two openings allowed on the apartment parcel. We have eliminated the two on the apartment completely. We are requesting that we have an opening for this parcel, an opening for this parcel, and we are proposing that there is the drive to exit the office park out onto Webb Road so that all of the traffic is not going just to 21<sup>st</sup> Street. We are trying to split the traffic here. She mentioned the sign earlier, and I want to say that we are doing two lanes out, one lane in, center median, landscaped with a sign that says 'Legacy Park Wilson Estates' so that this isn't just a back alley. I want this to be a major entrance so that people will use it."

Now, when we do that, there is going to be a median that is going to go back in, so my guess is that if you are coming along the front of this, you won't be able to turn in, you will have to go around. You will be able to use this entrance as well to get to the retail. It will be a little more limited. What they want me to do is to have this entrance here, this entrance here, share this entrance, and eliminate this one. I just want the ability that somewhere along here, if it is needed, to help the traffic flow, to be able to do that if it works. If it doesn't, we won't use it."

**MCKAY** "But the overall openings, I think, is what staff is concerned about, and Marvin just said that into the apartments, duplexes or four-plexes, whatever they are, if there is one there, and you are saying no. Are you talking about too many too close?"

**KROUT** "The apartments are not an issue, and in their site plan, they are showing their access off of the collector street. We are saying that if you want to have one to Webb Road in addition, that is fine, too. You still have 400 or 500 feet between those. We are really only talking about that one south parcel, south of the corner parcel where we are saying that that 17,000 square foot strip center, or whatever that is, we think can be adequately served by a drive-way just to the north and a drive-way just to the south. That is about 350 foot of frontage, and George is asking for one in the middle in addition."

**WARREN** "Except the north driveway really services the corner lot, doesn't it?"

**KROUT** "Yes. We are suggesting that that could be pulled down 20 or 30 feet and then it would be more direct to the adjoining parcel."

**LAHAM** "I thought that might be where you are going. This is pretty well set with the people that are doing the parcel on the corner, and they want their own access. They are not really willing, although we have cross access, I don't think they are going to acclimate that entrance to really accommodate easy entrance into our parcel. That is why I am concerned. If it comes out that way, great. But if it doesn't, I want to make sure that we can service our customers easily, as well."

**OSBORNE-HOWES** "I guess as part of this, if I could just ask, has Traffic Engineering been in on this?"

**KROUT** "Yes. Traffic agrees with the Planning staff, and I know what George is saying about wanting that flexibility. I just think he has done a great job on Rock Road of not having had access for every parcel that is out there, if you count your number of parcels on Rock Road."

**OSBORNE-HOWES** "Honestly, I am surprised."

**LAHAM** "Why is that?"

**OSBORNE-HOWES** "Well, I guess safety and so many access points I really think cuts down the integrity of the place, and I guess I am just surprised."

**LAHAM** "I'll tell you what. If you think about it, you probably don't have too many parcels with seven hundred feet of frontage that you have approved only two access points in. Probably most of them are like five access points."

**OSBORNE-HOWES** "I don't mean to argue with you, but I am concerned about the congestion, and have been, as you are, too, the congestion on Rock Road and how Bradley Fair has affected that. You have attempted to deal with that admirably. So now I am looking at Webb Road and I am thinking of that in the future."

**LAHAM** "Here is the thing, on Bradley Fair, along there, I think there are probably access points that we haven't ever used because we didn't find them necessary. Isn't that right, Marvin?"

**KROUT** "Yes, that is right. And we were just trying to say let's use the same kind of spacing that you have done on Rock Road, even though you are permitted to have more access points potentially, on Rock Road."

**LAHAM** "We have also spent a lot of money fixing things...access points, drive lanes, medians and things like that, to make it easier for people to move. The only thing I want to eliminate here is 'if we need it', because our plans are not set in stone today as to exactly where these buildings are going to be. I am just trying to eliminate another process of public hearings and the Board of Zoning Appeals, etc., to come back to ask for one entrance."

**OSBORNE-HOWES** "That has never stopped you before."

**LAHAM** "I know, but I am wearing out."

**MCKAY** "I guess where I am coming from is that these folks have already given up quite a bit to begin with. We are asking, if I am not mistaken, for them to give us some right-of-way on the south end of Parcel 3. Instead of a private drive, we are asking you to give away some land so that we can have the right-of-way there coming up. I think we are asking an awful lot from them, but that is my personal opinion."

**MARNELL** "George, I would like to commend you for the work on 21<sup>st</sup> Street. I think that is outstanding. I am sure that is saving the City from having to do something in the future to deal with those issues. So I am going to support your desire for the additional outlet onto Webb Road. Thank you for taking the neighborhood into consideration."

**BARFIELD** "Looking here at the CPO minutes, it states that one of the residents read in the November 7 City Council minutes that the homeowners' association withdrew opposition to Mr. Laham's development plans based on the developer's agreement not to put up apartments if the zoning was approved. Was there such an agreement?"

**LAHAM** "She was a little bit confused. That was related to this parcel and that lady attended our homeowner's meeting. We had full agreement with her when we left the homeowner's meeting, then she showed up at the CPO meeting, and brought up all of the same issues. I think she was just confused on what Marvin had addressed at the City Council meeting as far as where we would not build apartments."

What we said was that we would do all assisted living in this area, and that we would have the ability to do multi-family. Her interpretation was that it would revert back to single-family. That was my understanding. But, by the end of the meeting, I believe that she was in agreement with us on our plan. It is the neighbor's desire. They do prefer to have this office park here instead of multi-family, based on what we have done up the street."

**BARFIELD** "So there was never such an agreement, as far as you are concerned?"

**LAHAM** "No. We are doing a lot of work along Webb Road. Accel lanes, decel lanes, left-turn lanes here. We really would like to encourage Traffic Engineering and staff to go ahead as proposed to just doing a left-turn lane into Wilson. It would sure be nice if this whole intersection could be done, and I don't mean at my cost, to get the left-turn lanes and decel lanes done on the other side of the street, too. As you may recall, Webb Road has only been complete less than three years and here we go again, we are going to tear it up again. So maybe if we went in and could find a way to do all of the improvements at one time, it would surely, I think, make everybody along there happier and we won't have a patchwork street."

**VERTS** "Can I make a clarification, and I may have misunderstood Commissioner McKay, but you just stated that staff was requesting an additional right-of-way at the southern boundary of Parcel 3."

**MCKAY** "Did you not say that the south boundary of Parcel 3, which is the center there, that instead of going through the parking lot that you were going to request 50 feet?"

**VERTS** "The 50 feet is simply property that will stay within DP-201, the large residential CUP, but it will still be a private drive. We are not requesting that as additional right of way."

**MCKAY** "The only difference is that they are going to pay for it instead of putting it on the City. You can't use it for anything except a street."

**LAHAM** "It is a technical deal. It is because..."

**MCKAY** "You may not be requesting the right-of-way, but I am saying to you that you are because you are saying we want you to put a private street through there and you can't use it for anything else. You are taking away from the land use of that piece of property."

**VERTS** "That was theirs."

**MCKAY** "I don't care whose, I am simply stating that you are taking away from that piece of ground, 50 feet of it."

**LAHAM** "It will be a road and we are going to pay for it privately."

**VERTS** "Yes."

**GAROFALO** "Are there any other questions? Okay, thanks. Is there anyone else here to speak on this item? Seeing no one, I will bring it back to the Commission. What is the pleasure, folks?"

**PLATT** "Should we consider asking him to pay part of the traffic signal on 21<sup>st</sup> Street?"

**KROUT** "I will say that I don't think the traffic is going to warrant it, but we will ask the Traffic Engineer as this case goes on to the City Council."

**MCKAY** "Before I make a motion, do we need a motion for Item No. 6 and Item No. 7?"

**GAROFALO** "I think we will need a motion on Item No. 6 and Item No. 7."

**MCKAY** "Let me ask before I make a motion, is the controversy on the driveways on Webb Road on Item 7?"

**VERTS** "That's correct."

**MCKAY** "So it has nothing to do with Item 6a and 6b?"

**VERTS** "Right. But I have amended Condition No. 3 to read 200 feet instead of 300 feet."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: This is a developing area with a large percentage of still-vacant land. There are significant low-density residential uses to the north, south and west. There are large apartment complexes past the intersection and to the east. This development would act as a transition area between commercial and multi-family residential uses to the east and single-family residential to the north and west. The suitability of the subject property for the uses to which it has been restricted: The subject property could be developed as presently configured for multi-family residential or retirement center as it is currently zoned for. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request will have little if any detrimental impact on nearby property. Measures are being taken to maintain sufficient access to surrounding residential areas. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide to the Comprehensive Plan identifies commercial uses at the southwest corner of 21<sup>st</sup> Street and Webb Road with high-density residential areas buffering low-density residential areas to the west and south. Although the Land Use guide does not project commercial uses farther west than 600 feet from the intersection, it does suggest some type of buffering. With restrictions on architectural design, lighting, signage, setbacks, and building heights as indicated in the C.U.P. and proposed by the developer, the development would be in conformance with the recommendations of the Comprehensive Plan for buffering commercial uses from residential and other non-residential uses. Impact of the proposed development on community facilities: The change in use and configuration will not significantly increase proposed traffic counts for the intersection of 21<sup>st</sup> Street and Webb Road.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. APPROVE the zone change from "SF-6" Single-Family Residential, "B" Multi-Family Residential, and "LC" Limited Commercial to "GO" General Office, subject to replatting within one year.
- B. APPROVE Amendment #4 to DP-201, subject to the following conditions:
  1. Parcel 8 shall be limited to one access driveway along 21<sup>st</sup> Street North no closer than 320 feet to the east parcel boundary and in line with Greenleaf Street to the north of 21<sup>st</sup> Street.
  2. Parcel 8 shall be limited to one access driveway along Webb Road. Although zoned "LC" Limited Commercial, this driveway shall be limited to signage permitted in the "GO" General Office district.
  3. Parcel 8 shall include a 40-foot landscape buffer along the 21<sup>st</sup> Street frontage with any use permitted.
  4. Structures on Parcel 8 within 200 feet of the north property line shall be limited to one story. Structures may be two stories on the remainder of the parcel.
  5. Parcel 8 shall include a 90-foot building setback along the north boundary and 21<sup>st</sup> Street frontage.
  6. Traffic improvements to the driveway intersection of Parcel 8 shall include a deceleration lane for eastbound traffic and left turn lanes for east and west bound traffic for entrance into the parcel and the residential subdivision north of 21<sup>st</sup> Street. Dedication of 10 feet additional street right-of-way along the north boundary of Parcel 8 shall be required to facilitate these improvements, to be handled at the time of re-platting.



7. Offsite signs shall be permitted for Parcel 8 only through a variance issued by the Board of Zoning Appeals.
8. Parcel 10 shall be limited to one access driveway along Webb Road.
9. When warranted, traffic improvements to the intersection of Wilson Estates Parkway (19<sup>th</sup> Street North) and Webb road shall include a deceleration lane for southbound traffic turning right onto Wilson Estates Parkway and a left turn lane for northbound traffic entering onto Wilson Estates Parkway. At the time of re-platting, the applicant shall submit a guarantee ensuring these future improvements, including a transition north of the intersection, if necessary.
10. At the time of re-platting, the applicant shall dedicate an additional 10 feet of street right-of way along the east boundary of Parcel 10 for all existing frontage with less than 60 feet of half-street right-of-way.
11. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body. Any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
12. Any major changes in the development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
13. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
14. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The ordinance establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
15. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

**MCKAY** moved, **OSBORNE-HOWES** seconded the motion.

**JOHNSON** "What about the situation of the drive lining up with the drive across the street, how will that be handled?"

**KROUT** "That is part of the conditions of approval that they will line that up and that the developer will pay for the improvements of that intersection. This also includes the extension of that private street as part of this CUP so that the office park can have identification signage on Webb Road."

**JOHNSON** "I also heard that the neighbors to the north might not want that because it might not line up."

**KROUT** "I think there will be further discussion, as I understand it, between now and the City Council meeting with that neighborhood, but the Planning staff and the Traffic Engineer both agree with the applicant that that is the best way to do it."

**JOHNSON** "I agree too, but I just didn't want it to look like all of a sudden we are approving something that will get us into trouble with the homeowners to the north."

**LAHAM** "That would get me in trouble because I did tell them that I would support their interests, and have a meeting and have them be a part of that decision. I think they will come around to see what staff has recommended, but I agree with the Traffic Engineer. There are 177 homes that access out of Greenleaf and I think we need to give them some input in this decision."

**VERTS** "We could change No. 1 to say 'limited to one access drive-way with location being deferred to the time of platting.'"

**KROUT** "I think the Planning Commission should make a recommendation to the City Council on this."

**MCKAY** "And I am recommending the way you wrote it."

**VOTE ON THE MOTION:** The motion carried unanimously with 13 votes in favor.

**MCKAY** "Mr. Chair, I would like to make a motion now on Item 7a and 7b."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: This is a developing area with a large percent of still vacant land. There are significant low-density residential uses to the north, south and west. There are large apartment complexes past the intersection and to the east, all of which would support a commercial

convenience center at the intersection of 21<sup>st</sup> Street North and Webb Road. The suitability of the subject property for the uses to which it has been restricted: Currently, the property at the corner is zoned "LC" Limited Commercial and is part of the standard 600-foot commercially zoned corners that are present at the perimeter of the City of Wichita. This corner can currently be developed for commercial uses; this application simply extends the current zoning by approximately 400 feet to the south. Extent to which removal of the restrictions will detrimentally affect nearby property: The addition of 16,000 square feet of commercial uses at this corner, in light of use changes to the immediate west and south, should not have a significant impact on traffic or circulation for the intersection. Conformance of the requested change to adopted or recognized Plans/Policies: The conformance with the spirit and intent of the Comprehensive Plan was established when the majority of the property was rezoned to "LC" in the early 1960's. The development proposed conforms to the development objectives of the Comprehensive Plan, which recommends that commercial sites be located at arterial intersections. Impact of the proposed development on community facilities: The addition of this commercial zoning and development should not have a more significant impact on traffic than is already projected from the uses allowed in the existing C.U.P.) I move that we recommend to the governing body that the request be approved, subject to the following:

- C. APPROVE the zone change from "SF-6" Single-Family Residential to "LC" Limited Commercial, subject to replatting within one year.
- D. APPROVE Amendment #1 to DP-200, subject to the following conditions:
1. Parcel 3 shall have one access point along Webb Road.
  2. The applicant shall include a provision for cross-lot access between all parcels of the C.U.P. Through this agreement access for Parcel 2 would be a joint access for Parcel 3.
  3. The applicant shall dedicate, at the time of re-platting, an additional 10 feet of street right-of-way as indicated on the C.U.P. along the south  $\pm 297$  feet of the east boundary of Parcel 3 and along the west 30 feet of the north boundary of Parcel 1.
  4. The applicant shall revise the C.U.P. to conform to the Administrative Adjustment dated December 1999, specifically the adjusted building setback (to 5 feet) on the west boundary of Parcel 2.
  5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body. Any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
  6. Any major changes in the development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  7. The transfer of title of all or any portion of the land included with the C.U.P. does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
  8. All property included within this C.U.P. and zone case shall be re-platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The ordinance establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
  9. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

**MCKAY** moved, **WARREN** seconded the motion.

**KROUT** "The south 50 feet will actually be part of the previous CUP that you approved."

**MCKAY** "The only reason I am saying that, Marvin is that according to what I have here, there is a wall easement that is going to have to be adjusted if you are going to do that in the south 50 feet."

**VERTS** "That is a proposed easement, and can be adjusted when we get the revised plan."

**MCKAY** "You are asking for 50 feet for a private street to go in there to provide access. I am saying that is fine because that is not in the CUP presently. There are a number of things. That changes the setback line and it also changes the wall easement."

**VERTS** "Correct. And those revisions will have to be made. One of the conditions that we are requiring is that a revised CUP be submitted that reflect those changes."

**MCKAY** "The only thing I am saying is that I agree with everything except the openings on Parcel 3. I think because of the past record of the developer, and that he said if he doesn't need them he won't use them, that is good enough as far as I am concerned. He has done that all up and down Rock Road."

**MICHAELIS** "So, the only thing we are doing is changing Item No. 1 and allowing him to have two access points, correct?"

**GAROFALO** "Right."

**VERTS** "Which is essentially eliminating item No. 1 because their drawing shows two."

**VOTE ON THE MOTION:** The motion carried unanimously with 13 votes in favor.

-----

8. **Case No. DP-222 Amendment #1** - 21/127 L.C., applicant/Mid-Kansas Engineering Consultants, Inc. (Jason Gish), agent request to amend the Reed Commercial Community Unit Plan to increase the overall size of the CUP and increase the overall size of the CUP and increase pad sizes on property described as:

The North 900 feet of the West 1100 feet of the Northwest Quarter of Section 11, Township 27 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas. Generally located on the southeast corner of 21<sup>st</sup> street North and 127<sup>th</sup> Street East.

**GAROFALO** "Is there anyone here to speak on this item?"

**KROUT** "This is a CUP at 21<sup>st</sup> Street and 127<sup>th</sup> Street. We understand that the applicants want to defer it until the next meeting. We can take a motion on that unless there is someone who wants to speak."

**MOTION:** That the item be deferred to the January 13 meeting.

**WHEELER** moved, **CARRAHER** seconded the motion.

**MCKAY** "I see the applicant is here. I wonder if they have anything to say."

**GREG ALLISON** "We are fine with a deferral. We just wanted to make sure no one else was here to speak on this."

**VOTE ON THE MOTION:** The motion carried with 13 votes in favor.

**MCKAY** "I would like to make a comment. I was in a meeting last week with Marvin and one of the people there said that we always vote as a block. I guess today it is pretty evident that we are voting as a block."

-----

- 9a. **Case No. Z-3348** – Wallace and Rowlen Partnership (Linda S. Wallace and Rita L. Rowlen) (Owner) request a zone change from "LC" Limited Commercial and "TF'3" Two-family residential; and

- 9b. **Case No. CU-550** – Wallace and Rowlen Partnership (Linda S. Wallace and Rita L. Rowlen) (Owner) request a Conditional Use to allow outside display of Ultra Modern Pool and Patio; on property described as:

Lots 6 & 7, Block 1, Carriage House Plaza Addition, Sedgwick County, Kansas. Generally located north of Kellogg and west of Woodchuck 200 feet (8100 West Kellogg).

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant, Ultra Modern Pool and Patio, is requesting a Conditional Use and a zone change ("TF-3", Two-family Residential to "LC", Limited Commercial) to allow outside display and future expansion area on property zoned ? LC? Limited Commercial. The application area is located north of Kellogg and 200 feet west of Woodchuck in a building previously used for furniture sales. Parking is located to the east of the building, with access to Kellogg.

The site is currently developed with a 16,900 square foot commercial building. The intention is to establish a wrought iron fenced area west of the existing building (an area 30 feet wide and 150 long) to be used as an outdoor retail display area for the business. The display area, along with the enclosed building on the site, would be used for the sales of above ground pools, pool accessories, furnishings, chemicals, spas, fireplaces, etc. The display area would also house two aboveground pools that are too large to be kept within the ten-foot distance required by the code.

After the application was filed and advertised, staff learned that the applicant is also seeking approval for 5,000 square feet of outside storage to the rear of the existing building. This area is to be sandwiched between the back of the existing building and

a proposed new 3,000 square foot storage building. The east and west side of the storage area would be fenced with a solid fence 8 feet high to completely enclose the storage area. A gate would be located on the east side of the storage area, facing the parking lot and the "LC" zoned land located next door. The Zoning Code permits up to 10 percent of the amount of enclosed building area to be used for outside storage in the Limited Commercial district "by right", up to 20 by Conditional Use. The amount of area sought in this case would exceed 20 percent and requires rezoning or a variance.

The Limited Commercial District permits "outdoor display" of merchandise that is offered for sale within a building if it is displayed within 10 feet of the building, subject to the following standards: merchandise can not be on public property; no required off street-parking spaces may be utilized for display; no food or drink may be displayed except with the approval of the Health Department and the outdoor display of motor vehicles, used appliances, used house wares, used building materials, rental vehicles and equipment are not permitted. The Office of Central Inspection has interpreted that this use is not similar to prohibited uses listed above, but is similar to a nursery or garden center.

The proposed Conditional Use must meet the appropriate Conditional Use provisions of Section III-D.6.z of the Uniform Zoning Code pertaining to nurseries and garden centers. Some of these provisions are the location of the site being contiguous to an arterial or expressway, screening of mechanical equipment, lighting to be shielded away from adjoining properties (no string-type lighting permitted), no sound projecting devices or loudspeakers that can be heard beyond property lines, any repair or service of vehicles or equipment must occur within an enclosed building, and all vehicles used in conjunction with the business must be stored inside the main building, a garage, or other location as deemed appropriate by the Planning Commission within an adequately screened and enclosed compound on the property.

The rezoning request is for two lots located on the north end of the property. The zone change is being requested to provide for possible future expansion of the pool business. The applicant has agreed to build a masonry wall along Hendryx Street, at the 25-foot building setback line. A screening fence also will be required along the east line of the "TF-3" zoned lots if this request is approved, since there is Two-family zoning there today. The applicant has also agreed to plant trees at the rate of 1 tree per 30 feet along the north and east line where adjacent to or across the street from residential zoning.

The properties surrounding the application area are a mix of zoning districts and land uses. The lots to the north are zoned SF-6, Single-family and used for residential uses. To the east of the subject property are lots zoned "LC", Limited Commercial and "TF-3", Two-family residential that are vacant. The area to the south is Kellogg Highway. South of Highway 54 is "LI", Limited Industrial zoned land used for car sales. To the west is land that is approved for car sales on land zoned "LC" with a Community Unit Plan.

**CASE HISTORY:** Z-1244 approved "LC", Limited Commercial and "TF-3", Two-family residential zoning. The Carriage House Plaza Addition was recorded in 1971. BZA 17-73 approved a variance to reduce off-street parking requirements from 51 to 36 spaces on Lot 2, Block 1.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-6", Single-family Residential; homes  
SOUTH: "LI", Limited Industrial; Kellogg right-of-way; commercial uses  
EAST: ? LC", Limited Commercial and "TF-3", vacant  
WEST: "LC", Limited Commercial; approved for car sales

**PUBLIC SERVICES:** Municipal water and sewer service is available to this site. The property has access to Kellogg Drive, a frontage road for Kellogg. Kellogg is shown as a divided four-lane freeway on the 2020 Transportation Plan with existing traffic volumes of approximately 40,000 average daily trips (ADT). The 2030 Transportation Plan projects traffic along Kellogg to increase to approximately 90,000 ADT for this segment. The latest edition of the Transportation Improvement Program shows Kellogg becoming a 6-lane freeway around 2001-2.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for commercial uses. Commercial uses are appropriate along the Kellogg corridor.

**RECOMMENDATION:** Based upon the amended request and on information available prior to the public hearings, planning staff recommends that the Conditional Use request be APPROVED, subject to the following conditions:

1. The permitted merchandise for sale within the outdoor display area shall be limited to above-ground pools and pool accessories, spas, patio furnishings, planters, pots, statuary fountains, outdoor grills/fireplaces, and landscaping materials, and located in general conformance with the site plan. The display area shall be enclosed with a wrought iron fence at least 6 feet in height.
2. The applicant shall obtain all applicable permits, including but not limited to: building, health and zoning and landscaping.
3. The provisions of Section III-D.6.z of the Unified Zoning Code shall be strictly adhered to. Further, lighting of the outdoor display area shall be limited to light standards not greater than 16 feet in height, and shall have lights shielded to direct light downward and away from the adjacent properties and public street. In addition, there shall not be permitted any string-type lighting, string banners and/or flags, or any other similar outdoor materials designed and/or intended to be attention-attracting devices.

4. Any violation of the conditions approved as part of this request shall render the Conditional Use null and void.

Staff recommends that the request to expand "LC", zoning to Hendryx be approved, subject to a Protective Overlay with the following provisions:

A masonry wall shall be installed along the 25 foot building setback line of Hendryx Street. A screening fence shall be installed along the east line where adjacent to "TF-3" zoning. Landscaping at the rate of at least the equivalent of 1 shade tree or 2 ornamentals or 10 shrubs per 30 feet shall be installed along the north and east property line where across the street or adjacent to "TF-3" zoning.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The properties surrounding the application area are a mix of zoning districts and land uses. The lots to the north are zoned SF-6, Single-family and used for residential uses. To the east of the subject property are lots zoned "LC", Limited Commercial and "TF-3", Two-family residential that are vacant. The area to the south is Kellogg Highway. South of Highway 54 is "LI", Limited Industrial zoned land used for car sales. To the west is land that is approved for car sales on land zoned "LC" with a community unit plan. The restrictions applicable by the Unified Zoning Code and supplemented as stated above through this Conditional Use have further made this request compatible with the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned ? LC? Limited Commercial, and the primary use is allowed ? by right". The Unified Zoning Code does prohibit outdoor display in the "LC" district when it is located more than 10 feet from the building, however, the code permits consideration of the proposed Conditional Use to allow outside display within this zoning classification.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: With the provisions of the Code and the Conditional Use permit, detrimental impacts on the adjacent properties should be minimized. I
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed use is in conformance with the Adopted Plan guidelines.
5. Impact of the proposed development on community facilities: None identified.

**MILLER** "This is the area where Home Depot is located, and where you recently had a car sales lot request. It is the site of the old Home Accents building, if that helps you locate it. The reason for the need for the outdoor display is that, as you know, they sell pool supplies and they also sell swimming pools, so they want to set up a display for two of the pools that would be on the west side of the building. They will fence this in with a wrought iron fence for display purposes. They also intend to build an additional building back here (indicating), leaving a gap here so that they can go to the Board of Zoning Appeals to get approval for outside storage. The area they are needing is larger than what is authorized by the Code to be handled by a Conditional Use or by right. So that will have to be taken care of separately.

Also, back on these two lots back here (indicating) that are currently zoned "TF-3", there is a platted 25 building setback line. They have indicated that they will continue the masonry wall that is over in this area that the car lot and Home Depot and those guys have put in around to this point here. Are there any questions?"

**WARREN** "Is this the same organization that was moving from west of Tyler?"

**MILLER** "It could be. I am not sure where they are today."

**OSBORNE-HOWES** "Did you say that there would be outside storage on the north, or just on the west?"

**MILLER** "The display area would be to the west, which is what you would be approving today if you approve it. The storage would be in a space in between the existing building and the proposed building with fencing on each end to block it off that the BZA would have to approve. They want 5,000 square feet, and that is just more than we could do by Conditional Use."

**OSBORNE-HOWES** "But that wouldn't be adjacent to the residential zoning?"

**MILLER** "No."

**MCKAY** "I think I need to declare a conflict of interest and abstain. The original founder of Ultra Modern Pools, which is the construction end of it is my brother-in-law, and I think I probably ought to step down. Even though it is his daughters that are up here making the presentation, I think I will step down."

**GAROFALO** "Are there any other questions? Okay. We will hear from the applicant."

**MILLER** "We are recommending support of the 'LC' zoning, subject to a Protective Overlay. The provisions are that there be a wall installed at that 25 foot distance. That is found on Page 4 of the staff report. CPO 5 heard this last night and recommended approval."

**GAROFALO** "Okay. May we hear from the applicant?"

**RITA ROWLEN** "Good afternoon. This is my sister Linda Wallace. We are with the Wallace and Rowlen Partnership. Our business is known as Ultra Modern Pool and Patio. I concur with everything that has been said, and I simply ask you to approve this today. Thank you."

**GAROFALO** "Thank you. Are there any questions of the applicant? Is there anyone else to speak on this application? Seeing none, we will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The properties surrounding the application area are a mix of zoning districts and land uses. The lots to the north are zoned SF-6, Single-family and used for residential uses. To the east of the subject property are lots zoned "LC", Limited Commercial and "TF-3", Two-family residential that are vacant. The area to the south is Kellogg Highway. South of Highway 54 is "LI", Limited Industrial zoned land used for car sales. To the west is land that is approved for car sales on land zoned "LC" with a community unit plan. The restrictions applicable by the Unified Zoning Code and supplemented as stated above through this Conditional Use have further made this request compatible with the neighborhood. The suitability of the subject property for the uses to which it has been restricted: The property is zoned ? LC? Limited Commercial, and the primary use is allowed ? by right". The Unified Zoning Code does prohibit outdoor display in the "LC" district when it is located more than 10 feet from the building, however, the code permits consideration of the proposed Conditional Use to allow outside display within this zoning classification. Extent to which removal of the restrictions will detrimentally affect nearby property: With the provisions of the Code and the Conditional Use permit, detrimental impacts on the adjacent properties should be minimized. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed use is in conformance with the Adopted Plan guidelines. Impact of the proposed development on community facilities: None identified.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The permitted merchandise for sale within the outdoor display area shall be limited to above-ground pools and pool accessories, spas, patio furnishings, planters, pots, statuary fountains, outdoor grills/fireplaces, and landscaping materials, and located in general conformance with the site plan. The display area shall be enclosed with a wrought iron fence at least 6 feet in height.
2. The applicant shall obtain all applicable permits, including but not limited to: building, health and zoning and landscaping.
4. The provisions of Section III-D.6.z of the Unified Zoning Code shall be strictly adhered to. Further, lighting of the outdoor display area shall be limited to light standards not greater than 16 feet in height, and shall have lights shielded to direct light downward and away from the adjacent properties and public street. In addition, there shall not be permitted any string-type lighting, string banners and/or flags, or any other similar outdoor materials designed and/or intended to be attention-attracting devices.
4. Any violation of the conditions approved as part of this request shall render the Conditional Use null and void.

Staff recommends that the request to expand "LC", zoning to Hendryx be approved, subject to a Protective Overlay with the following provisions:

A masonry wall shall be installed along the 25 foot building setback line of Hendryx Street. A screening fence shall be installed along the east line where adjacent to "TF-3" zoning. Landscaping at the rate of at least the equivalent of 1 shade tree or 2 ornamentals or 10 shrubs per 30 feet shall be installed along the north and east property line where across the street or adjacent to "TF-3" or more restrictive zoning.

**OSBORNE-HOWES** moved, **MICHAELIS** seconded the motion, and it carried unanimously with 12 votes in favor. McKay abstained.

- 
10. **Case No. DP-53 Amendment #4** – Dillon Stores (Owner); PEC, c/o Rob Hartman (agent) requests an amendment to add nursery and garden center to uses permitted in Parcel 1 and Parcel 2 of DP-53 Quail Meadows C.U.P., described as:

Lots 1&2, Block 1, Quail Meadows 5<sup>th</sup> Addition, Sedgwick County, Kansas. Generally located on the northwest corner of Harry and Webb Road.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant proposes to amend DP-53 Quail Meadows Community Unit Plan in order to operate a seasonal nursery and garden center on a 0.3 acre portion of Parcel 1 and Parcel 2 that is currently zoned "LC" Limited Commercial. Nurseries and garden centers that do not meet the outdoor display and storage restrictions of the "LC" Limited Commercial district are permitted only as a "Conditional Use." When the proposed location of the "Conditional Use" is within a C.U.P., review of the request is handled as an amendment to the C.U.P.

The nursery/garden center is situated at the southeast corner of Parcel 2 and occupies most of Parcel 1 of the Quail Meadows C.U.P. The remainder of the 7.0± acre tract is occupied by Dillons Super Store and parking. The greenhouse is 21' X 72' in size, surrounded by seasonal retail area for outdoor storage plants and landscape supplies. A fence encloses the outdoor display area. The overall size of the nursery/garden center is 0.3 acres and eliminates 51 parking spaces. However, total parking provided on Parcel A would meet the required parking when the additional parking required for the garden center is added to other parking required. The greenhouse would be a temporary membrane structure used for seasonal retail. No signage for the nursery/garden center has been requested.

The main change proposed to the C.U.P. is to add nursery and garden center per the Unified Zoning Code requirements of Section III-D.6.z. These requirements stipulate that garden centers should be located on arterial streets or expressways, be screened when adjacent to residential zoning districts, and have display/storage areas within an enclosed building or screening fence (if required) or be adjacent to the building. Additionally, the display/storage areas should not be within 25 feet of the right-of-way or be located within required parking spaces. Other restrictions include: having lights shielded away from adjoining properties, prohibiting string lights, prohibiting sound projecting devices or loudspeakers that could be heard beyond the property boundaries, and prohibiting the outdoor repair or servicing of vehicles and equipment. A site plan is required that shows the location of structures, ingress/egress, off-street parking, loading, on-site circulation, and designates storage/display areas. One final aspect of this section is the provision that MAPC may establish other conditions it deems necessary for the protection of adjacent property, and including the maintenance of property. It can also require periodic reports of compliance to be prepared.

The proposed C.U.P. for Quail Meadows addresses site requirements. There is no separate provision for loading/unloading at the garden center site, but would use the adjacent parking area. The C.U.P. adheres to restrictions, such as lighting, by reference to Section III-D.6.z of the UZC.

Quail Meadows is developed with a Dillons Super Store as the major tenant. A commercial strip center, several freestanding restaurants, a service station, and a bank are located to the east and southeast. Directly south is a vacant lot on the corner of the intersection, bordered by McDonalds to the south, offices along Harry and apartments. More apartments are located to the west and northwest. An office, a day care, and a vacant parcel are located directly north of Dillons.

**CASE HISTORY:** DP-53 Quail Meadows C.U.P. was approved May 29, 1973. It was amended with respect to Parcel 3A in 1995 (Amendment #1) and 1999 (Amendment #3). Amendment #2 to allow a drive-through restaurant was denied. Quail Meadows 5<sup>th</sup> Addition was platted April 28, 1977.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC"	Limited Commercial;	Vacant, office, day care, apartments
SOUTH: "LC"	Limited Commercial	Vacant lot, office, apartments
EAST: "LC"	Limited Commercial;	Commercial strip center, restaurant, bank
WEST: "TF-3"	Two-Family;	Multi-family

**PUBLIC SERVICES:** This site has access to Webb Road, a four-lane arterial, and Harry, a four-lane arterial, with left-turn lanes, right turn/accel/decel lanes. 1997 ADTs were 14,579 on Harry approaching Webb eastbound and 17,758 on Webb approaching Harry southbound. Municipal water and sanitary sewer, services are available.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area for commercial use. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

**RECOMMENDATION:** Based on information available prior to the public hearing, Staff recommends that the requested Amendment #4 be APPROVED, subject to the following conditions:

1. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
2. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.
3. Prior to the sale of any landscaping materials covered by their amendment, the applicant shall annually submit a site plan to the Zoning Enforcement Division of the Office of Central Inspection that depicts the general location of any structures, merchandise or landscaping materials. This site plan shall be reviewed by Central Inspection for compliance with the conditions specified in this amendment.

4. The development of this property shall proceed in accordance with the development plan as recommended as approved by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
7. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area has commercial uses located on all corners of Harry and Webb Road, although none of the other uses involve outdoor display/storage. The commercial activities include the Dillons, small retail/office centers, and several restaurants. The proposed nursery and garden center is separated from the nearest residential areas by existing commercial structures.
2. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The location at the corner of the Dillons parcel would make the outdoor display use highly visible to traffic on both arterial streets.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan.
5. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on Harry and Webb by increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.

**GOLTRY** "This item is one of 5 requests that are identical in the type of Conditional Use they are requesting as part of their C.U.P. amendments. There are 5 different sites involved, so what I thought I would do, in the interest of expediting the comments, is to give a general background on what it is that the applicant is requesting, which is the Dillons store. They are requesting seasonal nursery and garden centers to be located in their parking lots. Then we can go back through and flip through the slides of each of the sites and if you have any particular questions on the sites, we can address those or any questions on Dillons in general.

Each request is for a greenhouse building surrounded by some outdoor display and storage for gardening materials for plants. They range in size from about 0.3 to 0.4 of an acre. They are required to apply for a C.U.P. amendment because anytime you have outdoor display and storage located more than 10 feet from the building, or square footage that is more than 10% of the building but less than 20% of the building area, then you are required to get a Conditional Use, and as we know the Conditional Uses, when they fall within a C.U.P. require a C.U.P. amendment. They would be required to adhere to Section 3.D.6.Z of the Unified Zoning Code, which is the specific requirements that deal with nursery and garden centers, and that is a range of requirements that include such things as (1) no string lighting nor loud outdoor projection devices; (2) no additional lighting; (3) that lighting be reflected downward and away from adjoining residential areas.

The general size of most of the most of the greenhouses is 21 x 72 feet in size. Most of these are existing operations that have been seasonal in the past in the Dillon's parking lots. They have been getting temporary permits. It wasn't quite according to the Code. The Office of Central Inspection has requested that Dillons go through this process to firm up their ability to do this inside their parking lots.

We have listed just a few conditions: that the display and storage of merchandise, nursery stock, and landscaping materials must be within the enclosed building or within the area designated on the C.U.P. and approved by the Planning Commission. So I would note that by reference, that means that we have a site plan attached to each of the 5 applications, and that the site plan does designate an area that would be where they would confine their seasonal nursery and garden operations.

The second condition is that they do conform to all requirements of the section of the Unified Zoning Code that I previously discussed, and the third condition is that prior to utilization they submit a report to the Zoning Enforcement division of O.C.I. Actually, this would probably follow along with when they go in to get their annual permit to erect the structures.

The fourth condition is that the development of the property be in accordance with the development plan (the site plan) that is attached. In terms of parking requirements, one of the questions that has been raised was in terms of parking requirements. All of the existing C.U.P.s had a certain amount of building that had been constructed upon them that would determine how



much parking they were required to provide. We added in the square footage that was being used for this seasonal operation to 'up' if you will, their parking requirements, and then looked at what they are providing. We found that in all 5 cases, in one case, they just meet their conditions, and in all of the other 4 remaining cases, they more than exceed their required parking. So we do not feel that parking was an issue.

At CPO 2 on Monday night, there were some reservations expressed. The vote was 4-1, I believe. Reservations were expressed at one particular Dillons, the one at Central and Rock Road about drainage issues, which probably are not very closely related to the question at hand. Other questions that were raised at CPOs regarded is it going to be a seasonal operation? Is it going to be operating after dark? Those were the main concerns.

CPO 5 met last night on them and approved the three that were in their area unanimously with not very many comments. Are there questions in general about it before I begin the slides?"

**GAROFALO** "Is it necessary for us to go through the slides? Does anybody want to see them?"

**MCKAY** "Not unless it is a requirement."

**KROUT** "I don't think you need to. If there are questions, we can take them."

**GOLTRY** "Okay. I will say CPO 5 on the one at 13<sup>th</sup> and Tyler, there was one CPO member who expressed reservation with the location of that site because it is so close to the corner at Tyler and 13<sup>th</sup>, and he thought it was too highly visible. His argument was to contrast that with the one at Central and Maize where the Walgreen's Express store kind of screens, if you will, the operation from the corner.

I don't think he was meaning that it wasn't visible, I think he was meaning that it was too visible, although he wasn't real clear on that point."

Lopez returned to the meeting at 12:50 p.m.

**OSBORNE-HOWES** "I have a question about just one of the locations. On agenda Item No. 11 at 21<sup>st</sup> and Maize Road. When I looked at all of the applications, it struck me that what is different about this one is that it is adjacent to residential as opposed to being on the west side of the building, which would put it not very close to residential.

Two questions. One, how do you all feel about that? I am concerned about that. Secondly, was the Chadsworth Homeowner's Association approached about that?"

**GOLTRY** "The answer to the first question is that I did notice that it is adjacent to residential. They do have a screening wall and I do have slides if we wanted to just go to the slides of that particular area and look at it. I also looked at what would have been the feasibility to put on the other side of the site, which was where they had a drive-through bank, teller-type window in operation, plus then on the corner there is a gas station. It is back the sufficient distance it is supposed to be, in terms of the setback. It has the screening wall attached. I believe that it is operated in the same location in previous years. I don't know about notification off-hand."

**OSBORNE-HOWES** "You don't know about the Homeowner's Association?"

**GOLTRY** "I don't know. I don't believe there has been any specific meetings with the neighborhood association on that."

**GAROFALO** "Susan, do you want to see the slides on that?"

**OSBORNE-HOWES** "No, I don't need to. If somebody else wants to, they are welcome to."

**MICHAELIS** "I have a question. Is this something that we are going to grant? Is this a year-around thing and they can have stuff out there all year around now? Not just Christmas trees but in the summer they can anything they want? So what they are asking for is a space they can store or put out whatever they want whenever they want, right?"

**GOLTRY** "Pretty much, yes."

**MICHAELIS** "Okay. Then the one I would question is the one at Central and Rock Road. I mean, we are putting that right on Rock Road. To me, that seems like a pretty bad spot to want to put something. We are talking about a sidewalk vender who wants to be set up year-round. That is essentially what this is amounting to."

**GOLTRY** "Actually, they have asked for it as a seasonal nature, and maybe we could discuss with them whether they are willing to limit the time-frame of the request. They have said that it would be a temporary membrane structure that would go up and come down, but the location at Central and Rock is the same location that they have operated in the past, at least three years, I believe that I have been aware of it."

**WHEELER** "I assume that once this type of thing is approved, it is a function of Central Inspection, and I don't have that big of a concern with Dillons, but I see, for instance, with discount department stores that year after year those temporary things have consumed as much as a third to a half of their parking lot and no one seems to squawk about it. I guess I have a concern that

this is a precedent that once we approve these, this allows a number of things to occur on an ongoing regular basis that could grow beyond boundaries that are defined."

**GOLTRY** "Were it to grow beyond these boundaries, they would need to come back for either an adjustment, if it were a small amount of increase, or if it were a major increase, more than 10%, it would require an amendment. I do hear what you are saying. You don't want this to just keep growing and growing like Topsy."

**WHEELER** "And I assume these are greenhouses that are primarily for an early spring growing season."

**GOLTRY** "Bedding plants, etc. I got that impression."

**MCKAY** "Well, didn't we give the Wal-Mart stores this same thing about 3 or 4 years ago?"

**KROUT** "Over on Rock Road, yes. I think the Wal-Mart on West Kellogg is one of those areas like Builder's Square that came up at around the same time. Those sites are zoned General Commercial, so outside display is permitting Commercial Use and so we don't have the same control that you do here on identifying the size."

**GAROFALO** "Are there any other questions of Donna? Thanks, Donna. We will hear from the applicant."

**ROB HARTMAN** "I am here on behalf of the applicant. These are a seasonal type use. When they come in and pull a building permit, it is for like 120 days only and runs from March or April through the first part of July."

The second question you had as far as sizes growing. On each one of these applications, we have a specific area defined that is approximately 100 x 140 or 150 feet and that is the only area they can do this on their site. So as far as it growing, as Donna said, if they decide they want to make it larger, they would have to come in for an amendment.

We are in agreement with all of staff comments, and will answer any questions you might have. Oh, to answer on Code Enforcement, they have just hired somebody who is doing Code Enforcement now who is going around and looking at these every year now, where in the past, they haven't had anybody available, I guess. So that is one of the reasons for the amendment to be in compliance, because up until just recently they weren't really enforcing it. I believe that they are now enforcing the Code."

**OSBORNE-HOWES** "Did they have to post signs?"

**HARTMAN** "Yes, signs were posted and we also had to send out notifications. Each C.U.P. ranged anywhere from 500 to 750 feet notification area."

**OSBORNE-HOWES** "I drove around there and didn't see any, and I just wondered if somebody had taken them down."

**HARTMAN** "They may have."

**OSBORNE-HOWES** "And then, I want to go back to Agenda Item No. 11 and the Dillon's at 21<sup>st</sup> and Maize. I do see that as different from the others in that it is adjacent to residences. My first question is, did you approach the homeowners' association with this?"

**HARTMAN** "No, we did not."

**OSBORNE-HOWES** "That one is different from the others in that it really is very close. I guess I am wondering. I wish you would have."

**HARTMAN** "I didn't even think about it, myself. We sent out notifications and I checked with Planning to see if anybody had called in with questions and there weren't any, so I assumed everybody was okay with it."

**OSBORNE-HOWES** "Again, then why didn't you look at the west side as opposed to the side that is close to them?"

**HARTMAN** "Part of it is, I think, the way the parking lot is arranged with the bank on the corner, and then there is a drive-through facility. There is also a drive-up prescription window there on the west side of the building. With that circulation, they just seemed to think this fits better for their operations on the west side."

**OSBORNE-HOWES** "It is more visible to the street, certainly. I do have concerns about that."

**HARTMAN** "Okay."

**KROUT** "The homeowners' association probably was notified. There is a reserve that is within about 200-300 feet of this area. So they probably were on the notification list."

**GOLTRY** "I haven't seen them on the list. Transfer Development, LLC was on the list and there were 96 homeowners notified."

**GARFALO** "Donna, could we get a slide up like that (indicating) of No. 11? The Maize and 21<sup>st</sup> Street?"

**MARNELL** "Rob, how many years did this operate? Has that greenhouse been there?"

**CRAIG ERICKSON** (From audience) "I am with Dillons. This will be the first year. We have never operated a greenhouse out of there before."

**MARNELL** "Thank you."

**GAROFALO** "Will you go to the first slide? Okay. So, where would the greenhouse be? Okay, and the housing is right there."

**HARTMAN** "The actual greenhouse itself would be about 85 feet from the east property line where the wall is, and 100 feet back from 21<sup>st</sup> Street."

**GAROFALO** "So, show us approximately where it would be. In feet, it is hard to tell."

**HARTMAN** (Indicating) "Approximately right in here. There is a masonry wall along here, the drive-in is here and here."

**MARNELL** "What is the height of the greenhouse structures?"

**HARTMAN** "Do you know, Craig?"

**ERICKSON** (From audience) "Yeah, probably 8 foot."

**HARTMAN** "It is kind of a domed thing usually."

**GAROFALO** "Have you considered any other location for it on that site?"

**HARTMAN** "We haven't. This is the site that Dillon's preferred. It was their decision."

**GAROFALO** "Sir, if you want to speak, will you please step up to the podium? Give your name and address, please."

**CRAIG ERICKSON** "I am with Dillon's. To answer your question, one of the things we look at when we determine where we want to locate these is, No. 1, safety. As Rob says, we have a Kwik Shop over here on the corner. There is a drive-up bank facility and we have a drive-up facility on the west side of our store for the pharmacy. So we felt that putting it over towards the west side behind the Kwik Shop with the traffic circulation wouldn't work out very well for anybody. So, safety is the first issue.

Then circulation on the property. We just felt that putting it over on the east side of the parking lot works out best and keeps it away from the front door. Most people like to park as close to the store as they can. So we hate to take up primary parking spaces and try to pick an area that is out of the way but yet visible to the public. Visibility is important to us. It is more or less an impulse item. Somebody is driving by and see it and pull in. Hopefully they will buy some plants from us."

**GAROFALO** "And where is the access there, on 21<sup>st</sup> Street?"

**ERICKSON** (Indicating) "There is an access right here and we will be to the west of that access."

**GAROFALO** "Are there any other questions?"

**MCKAY** "When I heard that gentleman mention the Kwik Shop, it makes me think that I believe I have a conflict of interest. I lease a Kwik Shop location to Dillon's. I think I will have to abstain from all five of them. I hadn't thought about it until he mentioned that."

**WARREN** "Are we going to take them one at a time?"

**GAROFALO** "Legally, what should we do. Maybe we had better take them one at a time. Is there anyone else here to speak on any of these Dillon's applications? Seeing none, we will take it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The area has commercial uses located on all corners of Harry and Webb Road, although none of the other uses involve outdoor display/storage. The commercial activities include the Dillons, small retail/office centers, and several restaurants. The proposed nursery and garden center is separated from the nearest residential areas by existing commercial structures. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years. Extent to which removal of the restrictions will detrimentally affect nearby property: The location at the corner of the Dillons parcel would make the outdoor display use highly visible to traffic on both arterial streets. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on Harry and Webb by

increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The seasonal nursery and garden center shall be located in a temporary structure and shall operate for no more than 120 days during a calendar year.
2. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
3. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.
4. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

**WARREN** moved, **CARRAHER** seconded the motion.

**WHEELER** "I have a question of the applicant, if they would be open to restrict these to certain months or certain time periods, and specifically for nursery sales?"

**ERICKSON** "As Rob said earlier, when we go in, they have to pull a building permit. I believe we are limited to 120 days of operation under that permit. Normally what we would do is pull the permit in late March or early April and by the end of June or right after the Fourth of July, the structures come down. But we are limited by the building permit as far as how long we can have the structure out there."

**KROUT** "The conditions don't simply say 'for a temporary building', and they do permit this as one of the permitted buildings on site. So, potentially, unless you limit it to tie it somehow to temporary buildings, this could be a permanent building. So, I think maybe it would be appropriate, in all of these cases, to add that the building would be temporary."

**WHEELER** "My other concern is that today nursery sales make sense, but they might sell fountains and statues during the summer, and then come fall, they might want to do fireplaces, patio pots. You know."

**KROUT** "You could say a temporary building and no more than 120 days. So that will cover the length of that temporary building."

**HARTMAN** "Dillons wouldn't be opposed to that."

**WARREN** "Okay, then I will amend my motion."

**AMENDED MOTION:** That the buildings will be temporary.

**WARREN** moved, **CARRAHER** seconded the motion.

**VOTE ON THE MOTION:** The motion carried with 13 votes in favor. McKay abstained.

- 
11. **Case No. DP-204 Amendment #2** – Dillon Stores (owner); PEC, c/o Rob Hartman (agent), request an amendment to add nursery and garden center to uses permitted in Parcel 4 of DP-204 Chadsworth Commercial C.U.P., described as:

Lot 4, Chadsworth Commercial 2<sup>nd</sup> Addition, Wichita, Kansas, Sedgwick County, Kansas. Generally located on the southeast corner of 21<sup>st</sup> Street North and Maize Road.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant proposes to amend DP-204 Chadsworth Commercial Community Unit Plan in order to operate a seasonal nursery and garden center on a 0.35 acre portion of Parcel 4 that is currently zoned "LC" Limited Commercial. Nurseries and garden centers that do not meet the outdoor display and storage restrictions of the "LC" Limited Commercial district are permitted only as a "Conditional Use." When the proposed location of the "Conditional Use" is within a C.U.P., review of the request is handled as an amendment to the C.U.P.

The nursery/garden center is situated along Maize near the southeast corner of the site. The remainder of the 8.6± acre tract is occupied by Dillons Store and parking. The greenhouse is 21' X 72' in size, surrounded by seasonal retail area for outdoor storage plants and landscape supplies. A fence encloses the outdoor display area. The overall size of the nursery/garden center is 0.35 acres and eliminates 60 parking spaces. However, total parking provided after removal of the spaces would still greatly exceed required parking.

The main change proposed to the C.U.P. is to add nursery and garden center per the Unified Zoning Code requirements of Section III-D.6.z. These requirements stipulate that garden centers should be located on arterial streets or expressways, be screened when adjacent to residential zoning districts, and have display/storage areas within an enclosed building or screening fence (if required) or be adjacent to the building. Additionally, the display/storage areas should not be within 25 feet of the right-of-way or be located within required parking spaces. Other restrictions include: having lights shielded away from adjoining properties, prohibiting string lights, prohibiting sound projecting devices or loudspeakers that could be heard beyond the property boundaries, and prohibiting the outdoor repair or servicing of vehicles and equipment. A site plan is required that shows the location of structures, ingress/egress, off-street parking, loading, on-site circulation, and designates storage/display areas. One final aspect of this section is the provision that MAPC may establish other conditions it deems necessary for the protection of adjacent property, and including the maintenance of property. It can also require periodic reports of compliance to be prepared.

The proposed C.U.P. for Chadsworth addresses site requirements except for provision for loading/unloading, which would be done on the adjacent parking area. The C.U.P. adheres to restrictions, such as lighting, by reference to Section III-D.6.z of the UZC.

Dillons occupies the majority of Parcel 4. A drive-through bank is located on the western side of the parcel, accessed via Maize Road. A service station is located on Parcel 5 on the southwest corner of the C.U.P. Additional retail and office uses are located on the five parcels of the C.U.P. that are along Maize Road north of the Dillons. Single-family residences border the Dillons site on the north and east. A concrete screening wall separates the uses. The property on the other three corners of 21<sup>st</sup> and Maize are zoned "LC" and "GC" and are in commercial use. A large tract proposed for commercial and office use, Newmarket Square, is located across from Chadsworth Commercial C.U.P. to the west.

**CASE HISTORY:** DP-204 Chadsworth Commercial C.U.P. was approved in 1992. It was platted as Chadsworth Commercial 2<sup>nd</sup> Addition on August 14, 1995.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LC" Limited Commercial;	Commercial, single-family residences "SF-6" Single-Family
SOUTH:	"LC" Limited Commercial	Commercial
EAST:	"SF-6" Single-Family;	Single-family residences
WEST:	"LC" Limited Commercial;	Commercial "GC" General Commercial

**PUBLIC SERVICES:** This site has access to 21<sup>st</sup> Street North, a five-lane arterial, and Maize Road, a four-lane arterial, with left-turn lanes, right turn/accel/decel lanes. 1997 ADTs were 8,848 on 21<sup>st</sup> Street westbound and 6,163 on Maize Road northbound. Municipal water and sanitary sewer services are available.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area for commercial use. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

**RECOMMENDATION:** Based on information available prior to the public hearing, Staff recommends that the requested Amendment #2 be APPROVED, subject to the following conditions:

1. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
2. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.

3. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
4. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
7. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area has commercial zoning and many commercial and retail uses located on all corners of the intersection. Single-family residential use is located to the east of the site. The proposed nursery and garden center is separated from the adjacent residential neighborhood by a solid screening wall. 21<sup>st</sup> Street North is a major retail corridor for the western portion of the Wichita Metropolitan area.
2. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" will replace parking with seasonal retail uses near residential uses that are separated by the screening wall; however, none of the seasonal retail uses are located within the 35-foot setback line.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan.
5. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on 21<sup>st</sup> Street North and Maize Road by increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.

**GOLTRY** "This item is one of 5 requests that are identical in the type of Conditional Use they are requesting as part of their C.U.P. amendments. There are 5 different sites involved, so what I thought I would do, in the interest of expediting the comments, is to give a general background on what it is that the applicant is requesting, which is the Dillons store. They are requesting seasonal nursery and garden centers to be located in their parking lots. Then we can go back through and flip through the slides of each of the sites and if you have any particular questions on the sites, we can address those or any questions on Dillons in general.

Each request is for a greenhouse building surrounded by some outdoor display and storage for gardening materials for plants. They range in size from about 0.3 to 0.4 of an acre. They are required to apply for a C.U.P. amendment because anytime you have outdoor display and storage located more than 10 feet from the building, or square footage that is more than 10% of the building but less than 20% of the building area, then you are required to get a Conditional Use, and as we know the Conditional Uses, when they fall within a C.U.P. require a C.U.P. amendment. They would be required to adhere to Section 3.D.6.Z of the Unified Zoning Code, which is the specific requirements that deal with nursery and garden centers, and that is a range of requirements that include such things as (1) no string lighting nor loud outdoor projection devices; (2) no additional lighting; (3) that lighting be reflected downward and away from adjoining residential areas.

The general size of most of the most of the greenhouses is 21 x 72 feet in size. Most of these are existing operations that have been seasonal in the past in the Dillon's parking lots. They have been getting temporary permits. It wasn't quite according to the Code. The Office of Central Inspection has requested that Dillons go through this process to firm up their ability to do this inside their parking lots.

We have listed just a few conditions: that the display and storage of merchandise, nursery stock, and landscaping materials must be within the enclosed building or within the area designated on the C.U.P. and approved by the Planning Commission. So I would note that by reference, that means that we have a site plan attached to each of the 5 applications, and that the site plan does designate an area that would be where they would confine their seasonal nursery and garden operations.

The second condition is that they do conform to all requirements of the section of the Unified Zoning Code that I previously discussed, and the third condition is that prior to utilization they submit a report to the Zoning Enforcement division of O.C.I. Actually, this would probably follow along with when they go in to get their annual permit to erect the structures.

The fourth condition is that the development of the property be in accordance with the development plan (the site plan) that is attached. In terms of parking requirements, one of the questions that has been raised was in terms of parking requirements. All of the existing C.U.P.s had a certain amount of building that had been constructed upon them that would determine how much parking they were required to provide. We added in the square footage that was being used for this seasonal operation to 'up' if you will, their parking requirements, and then looked at what they are providing. We found that in all 5 cases, in one case, they just meet their conditions, and in all of the other 4 remaining cases, they more than exceed their required parking. So we do not feel that parking was an issue.

At CPO 2 on Monday night, there were some reservations expressed. The vote was 4-1, I believe. Reservations were expressed at one particular Dillons, the one at Central and Rock Road about drainage issues, which probably are not very closely related to the question at hand. Other questions that were raised at CPOs regarded is it going to be a seasonal operation? Is it going to be operating after dark? Those were the main concerns.

CPO 5 met last night on them and approved the three that were in their area unanimously with not very many comments. Are there questions in general about it before I begin the slides?"

**GAROFALO** "Is it necessary for us to go through the slides? Does anybody want to see them?"

**MCKAY** "Not unless it is a requirement."

**KROUT** "I don't think you need to. If there are questions, we can take them."

**GOLTRY** "Okay. I will say CPO 5 on the one at 13<sup>th</sup> and Tyler, there was one CPO member who expressed reservation with the location of that site because it is so close to the corner at Tyler and 13<sup>th</sup>, and he thought it was too highly visible. His argument was to contrast that with the one at Central and Maize where the Walgreen's Express store kind of screens, if you will, the operation from the corner.

I don't think he was meaning that it wasn't visible, I think he was meaning that it was too visible, although he wasn't real clear on that point."

Lopez returned to the meeting at 12:50 p.m.

**OSBORNE-HOWES** "I have a question about just one of the locations. On agenda Item No. 11 at 21<sup>st</sup> and Maize Road. When I looked at all of the applications, it struck me that what is different about this one is that it is adjacent to residential as opposed to being on the west side of the building, which would put it not very close to residential.

Two questions. One, how do you all feel about that? I am concerned about that. Secondly, was the Chadsworth Homeowner's Association approached about that?"

**GOLTRY** "The answer to the first question is that I did notice that it is adjacent to residential. They do have a screening wall and I do have slides if we wanted to just go to the slides of that particular area and look at it. I also looked at what would have been the feasibility to put on the other side of the site, which was where they had a drive-through bank, teller-type window in operation, plus then on the corner there is a gas station. It is back the sufficient distance it is supposed to be, in terms of the setback. It has the screening wall attached. I believe that it is operated in the same location in previous years. I don't know about notification off-hand."

**OSBORNE-HOWES** "You don't know about the Homeowner's Association?"

**GOLTRY** "I don't know. I don't believe there has been any specific meetings with the neighborhood association on that."

**GAROFALO** "Susan, do you want to see the slides on that?"

**OSBORNE-HOWES** "No, I don't need to. If somebody else wants to, they are welcome to."

**MICHAELIS** "I have a question. Is this something that we are going to grant? Is this a year-around thing and they can have stuff out there all year around now? Not just Christmas trees but in the summer they can anything they want? So what they are asking for is a space they can store or put out whatever they want whenever they want, right?"

**GOLTRY** "Pretty much, yes."

**MICHAELIS** "Okay. Then the one I would question is the one at Central and Rock Road. I mean, we are putting that right on Rock Road. To me, that seems like a pretty bad spot to want to put something. We are talking about a sidewalk vender who wants to be set up year-round. That is essentially what this is amounting to."

**GOLTRY** "Actually, they have asked for it as a seasonal nature, and maybe we could discuss with them whether they are willing to limit the time-frame of the request. They have said that it would be a temporary membrane structure that would go up

and come down, but the location at Central and Rock is the same location that they have operated in the past, at least three years, I believe that I have been aware of it."

**WHEELER** "I assume that once this type of thing is approved, it is a function of Central Inspection, and I don't have that big of a concern with Dillons, but I see, for instance, with discount department stores that year after year those temporary things have consumed as much as a third to a half of their parking lot and no one seems to squawk about it. I guess I have a concern that this is a precedent that once we approve these, this allows a number of things to occur on an ongoing regular basis that could grow beyond boundaries that are defined."

**GOLTRY** "Were it to grow beyond these boundaries, they would need to come back for either an adjustment, if it were a small amount of increase, or if it were a major increase, more than 10%, it would require an amendment. I do hear what you are saying. You don't want this to just keep growing and growing like Topsy."

**WHEELER** "And I assume these are greenhouses that are primarily for an early spring growing season."

**GOLTRY** "Bedding plants, etc. I got that impression."

**MCKAY** "Well, didn't we give the Wal-Mart stores this same thing about 3 or 4 years ago?"

**KROUT** "Over on Rock Road, yes. I think the Wal-Mart on West Kellogg is one of those areas like Builder's Square that came up at around the same time. Those sites are zoned General Commercial, so outside display is permitting Commercial Use and so we don't have the same control that you do here on identifying the size."

**GAROFALO** "Are there any other questions of Donna? Thanks, Donna. We will hear from the applicant."

**ROB HARTMAN** "I am here on behalf of the applicant. These are a seasonal type use. When they come in and pull a building permit, it is for like 120 days only and runs from March or April through the first part of July."

The second question you had as far as sizes growing. On each one of these applications, we have a specific area defined that is approximately 100 x 140 or 150 feet and that is the only area they can do this on their site. So as far as it growing, as Donna said, if they decide they want to make it larger, they would have to come in for an amendment.

We are in agreement with all of staff comments, and will answer any questions you might have. Oh, to answer on Code Enforcement, they have just hired somebody who is doing Code Enforcement now who is going around and looking at these every year now, where in the past, they haven't had anybody available, I guess. So that is one of the reasons for the amendment to be in compliance, because up until just recently they weren't really enforcing it. I believe that they are now enforcing the Code."

**OSBORNE-HOWES** "Did they have to post signs?"

**HARTMAN** "Yes, signs were posted and we also had to send out notifications. Each C.U.P. ranged anywhere from 500 to 750 feet notification area."

**OSBORNE-HOWES** "I drove around there and didn't see any, and I just wondered if somebody had taken them down."

**HARTMAN** "They may have."

**OSBORNE-HOWES** "And then, I want to go back to Agenda Item No. 11 and the Dillon's at 21<sup>st</sup> and Maize. I do see that as different from the others in that it is adjacent to residences. My first question is, did you approach the homeowners' association with this?"

**HARTMAN** "No, we did not."

**OSBORNE-HOWES** "That one is different from the others in that it really is very close. I guess I am wondering. I wish you would have."

**HARTMAN** "I didn't even think about it, myself. We sent out notifications and I checked with Planning to see if anybody had called in with questions and there weren't any, so I assumed everybody was okay with it."

**OSBORNE-HOWES** "Again, then why didn't you look at the west side as opposed to the side that is close to them?"

**HARTMAN** "Part of it is, I think, the way the parking lot is arranged with the bank on the corner, and then there is a drive-through facility. There is also a drive-up prescription window there on the west side of the building. With that circulation, they just seemed to think this fits better for their operations on the west side."

**OSBORNE-HOWES** "It is more visible to the street, certainly. I do have concerns about that."

**HARTMAN** "Okay."



**KROUT** "The homeowners' association probably was notified. There is a reserve that is within about 200-300 feet of this area. So they probably were on the notification list."

**GOLTRY** "I haven't seen them on the list. Transfer Development, LLC was on the list and there were 96 homeowners notified."

**GARFALO** "Donna, could we get a slide up like that (indicating) of No. 11? The Maize and 21<sup>st</sup> Street?"

**MARNELL** "Rob, how many years did this operate? Has that greenhouse been there?"

**CRAIG ERICKSON** (From audience) "I am with Dillons. This will be the first year. We have never operated a greenhouse out of there before."

**MARNELL** "Thank you."

**GAROFALO** "Will you go to the first slide? Okay. So, where would the greenhouse be? Okay, and the housing is right there."

**HARTMAN** "The actual greenhouse itself would be about 85 feet from the east property line where the wall is, and 100 feet back from 21<sup>st</sup> Street."

**GAROFALO** "So, show us approximately where it would be. In feet, it is hard to tell."

**HARTMAN** (Indicating) "Approximately right in here. There is a masonry wall along here, the drive-in is here and here."

**MARNELL** "What is the height of the greenhouse structures?"

**HARTMAN** "Do you know, Craig?"

**ERICKSON** (From audience) "Yeah, probably 8 foot."

**HARTMAN** "It is kind of a domed thing usually."

**GAROFALO** "Have you considered any other location for it on that site?"

**HARTMAN** "We haven't. This is the site that Dillon's preferred. It was their decision."

**GAROFALO** "Sir, if you want to speak, will you please step up to the podium? Give your name and address, please."

**CRAIG ERICKSON** "I am with Dillon's. To answer your question, one of the things we look at when we determine where we want to locate these is, No. 1, safety. As Rob says, we have a Kwik Shop over here on the corner. There is a drive-up bank facility and we have a drive-up facility on the west side of our store for the pharmacy. So we felt that putting it over towards the west side behind the Kwik Shop with the traffic circulation wouldn't work out very well for anybody. So, safety is the first issue.

Then circulation on the property. We just felt that putting it over on the east side of the parking lot works out best and keeps it away from the front door. Most people like to park as close to the store as they can. So we hate to take up primary parking spaces and try to pick an area that is out of the way but yet visible to the public. Visibility is important to us. It is more or less an impulse item. Somebody is driving by and see it and pull in. Hopefully they will buy some plants from us."

**GAROFALO** "And where is the access there, on 21<sup>st</sup> Street?"

**ERICKSON** (Indicating) "There is an access right here and we will be to the west of that access."

**GAROFALO** "Are there any other questions?"

**MCKAY** "When I heard that gentleman mention the Kwik Shop, it makes me think that I believe I have a conflict of interest. I lease a Kwik Shop location to Dillon's. I think I will have to abstain from all five of them. I hadn't thought about it until he mentioned that."

**WARREN** "Are we going to take them one at a time?"

**GAROFALO** "Legally, what should we do. Maybe we had better take them one at a time. Is there anyone else here to speak on any of these Dillon's applications? Seeing none, we will take it back to the Commission."

**WARREN** "I will make a motion to approve this as it was presented. I am just not offended by these types of things. In fact, I think they are kind of attractive at certain times of the year with the flowers and things that are out there. I guess I wonder who could be offended by them. I see them watering the plants and doing things that would be more cumbersome inside."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The area has commercial uses located on all corners of Harry and Webb Road, although none of the other uses involve outdoor display/storage. The commercial activities include

the Dillons, small retail/office centers, and several restaurants. The proposed nursery and garden center is separated from the nearest residential areas by existing commercial structures. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years. Extent to which removal of the restrictions will detrimentally affect nearby property: The location at the corner of the Dillons parcel would make the outdoor display use highly visible to traffic on both arterial streets. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on Harry and Webb by increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The seasonal nursery and garden center shall be located in a temporary structure and shall operate for no more than 120 days during a calendar year.
2. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
3. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.
4. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

**WARREN** moved, **WARNER** seconded the motion.

**OSBORNE-HOWES** "I want to speak to his comment. I shop at these, I like them and I buy some of my plants there. It is not just plants, its dirt and lots of other type of storage type of things that you see out there. The problem that I have with this one is that I am sure we will be looking at more of these in the future, and if we are saying that it is okay to locate this close to residential, then I really do have some concerns. We may say 'well, Chadsworth didn't respond, so it must be okay', but I think that at some point, we are keepers of the zoning process.

I am not opposed to these. I think they are important for retail. I support Dillon's right to have these, but I think we need to keep a reign on where they are located within an area. Obviously, Dillon's chose this area because it provides them with the most visibility. The thing that makes this different from the other ones is that it is right adjacent to residential. So I am going to vote against this unless it is changed to be on the west side. When you look at the site plan, it is doable. They could move it straight west, or they could move it to the northwest. That is my point."

**JOHNSON** "I am going to take a little different approach, due to the fact of being very familiar with the neighborhood directly east of this, being in control of a commercial building there. There is very little that is not known by that organization. I think Marvin can attest to that.

Secondly, if we were building this commercial property there, one of the requirements we would want to do would be to put landscaping in and maybe make it one-half times the Landscaping requirement, and then if we were going to have a greenhouse that has landscaping material in it, so I guess I am confused with what we are really trying to do here. So I am not going to be opposed to it."

**HENTZEN** "First of all, I am going to vote in favor of the motion. But I want you to think about something. Here is an outfit that has the right zoning, has all of the perimeter walls and everything that it needs, and we are going to sit here and say 'we know

how you should use your property better than you do. Don't do that. Let them compete. Let them compete as long as it doesn't violate any of the ordinances. I am going to tell you that they have done an outstanding job. I just want to tell you that I am in favor of the motion."

**MICHAELIS** "I guess I just have a question of them because one of the comments the gentleman made was that they like higher visibility, so I am wondering why it couldn't be moved up closer to the Kwik Shop there so you could see it from both entrances. Here is a case where we are talking about visibility, but yet this is the least visible of all of them."

**ERICKSON** "Here again, it is the traffic, the safety issue, the traffic circulation around the property. We just felt on the west side over next to the Kwik Shop that people will exit out of the Kwik Shop, (indicating) over here to over around this driveway. We just felt that for our purposes, the east side of the property would suit us the best."

**PLATT** "I just cant resist commenting that I am disappointed that I couldn't get any support for voting down a used car lot being too close to residential property and here we are concerned about some plants being too close."

**MOTION:** That the question be called.

**CARRAHER** moved, **WARREN** seconded the motion.

**VOTE ON THE MOTION:** The motion carried unanimously. (13-0).

**VOTE ON THE ORIGINAL MOTION:** The motion carried with 11 votes in favor. There were two in opposition (Osborne-Howes and Platt). McKay abstained.

- 
12. **Case No. DP-41 Amendment #2** – Dillon Stores (owner); PEC, c/o Rob Hartman (agent)\_request an amendment to add nursery and garden center to uses permitted in Parcel A of DP-41 Rockwood center C.U.P., described as:

Lots 3 and 4, Block 1, Rockwood Center 2<sup>nd</sup> Addition to Wichita, Sedgwick County, Kansas.  
Generally located on the southwest corner of Central and Rock Road.

**BACKGROUND:** The applicant proposes to amend DP-41 Rockwood Commercial Community Unit Plan in order to operate a seasonal nursery and garden center on a 0.4 acre portion of Parcel A that is zoned "LC" Limited Commercial. Nurseries and garden centers that do not meet the display and outdoor storage restrictions of the "LC" Limited Commercial district are permitted only as a "Conditional Use." When the proposed location of the "Conditional Use" is within a C.U.P., review of the request is handled as an amendment to the C.U.P.

The nursery/garden center is situated between the eastern side of the Dillons store and Rock Road, immediately south of the major entrance off Rock Road. The greenhouse is 21' X 54' in size, surrounded by seasonal retail area for outdoor storage plants and landscape supplies. A fence encloses the outdoor display area. The overall size of the nursery/garden center is 0.4 acres and eliminates 53 parking spaces. However, total parking provided on Parcel A still is well above that required by the Unified Zoning Code when the additional parking required for the garden center is added to total parking required. The greenhouse would be a temporary membrane structure used for seasonal retail. No signage for the nursery/garden center has been requested.

The main change proposed to the C.U.P. is to add nursery and garden center per the Unified Zoning Code requirements of Section III-D.6.z. These requirements stipulate that garden centers should be located on arterial streets or expressways, be screened when adjacent to residential zoning districts, and have display/storage areas within an enclosed building or screening fence (if required) or be adjacent to the building. Additionally, the display/storage areas should not be within 25 feet of the right-of-way or be located within required parking spaces. Other restrictions include: having lights shielded away from adjoining properties, prohibiting string lights, prohibiting sound projecting devices or loudspeakers that could be heard beyond the property boundaries, and prohibiting the outdoor repair or servicing of vehicles and equipment. A site plan is required that shows the location of structures, ingress/egress, off-street parking, loading, on-site circulation, and designates storage/display areas. One final aspect of this section is the provision that MAPC may establish other conditions it deems necessary for the protection of adjacent property, and including the maintenance of property. It can also require periodic reports of compliance to be prepared.

The proposed C.U.P. for Rockwood Center addresses site requirements. There is no separate provision for loading/unloading at the garden center site, but would use the adjacent parking area. The C.U.P. adheres to restrictions, such as lighting, by reference to Section III-D.6.z of the UZC.

Rockwood Center C.U.P. has a Dillons Super Store as the major tenant and three existing restaurants on outparcels, Chili's, the Olive Garden, and the Black-Eyed Pea. Retail businesses, including several small retail strip centers and a number of free-standing stores are located to the north, northeast, and east of Rockwood C.U.P. The C.U.P. is bordered by a drainage right-of-way to the west and southwest. Rockwood Subdivision is located beyond the drainage way. Additionally, the 100-foot buffer strip located along the border of this C.U.P. is zoned "GO" General Office and "B" Multi-Family to keep the more intensive uses allowed by the C.U.P. at a greater distance from Rockwood Subdivision.

**CASE HISTORY:** Rockwood Center C.U.P. was approved May 5, 1971, and amended November 25, 1986. Rockwood Center 2<sup>nd</sup> Addition was platted April 30, 1993.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC" Limited Commercial;	DP-5 Morris Town Commercial C.U.P.; "TF-3" Two Family duplexes
SOUTH: "SF-6" Single Family	Residences
EAST: "LC" Limited Commercial;	DP-49 Cobblestone Commercial C.U.P.;
"SF-6" Single Family	utility reserve
WEST: "SF-6" Single Family;	Residences, Rockwood Swim Club

**PUBLIC SERVICES:** This site has access to Rock Road, a six-lane arterial, and Central, a four-lane arterial, both also having accel/decel lanes and left turn lanes. 1997 ADTs were 21,330 on Central approaching Rock eastbound and 32,373 on Rock approaching Central northbound. Municipal water and sanitary sewer, services are available.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area for commercial use. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. Rock Road is identified in the Plan as a major travel corridor, which should have special treatment to maintain a positive visual appearance.

**RECOMMENDATION:** Based on information available prior to the public hearing, Staff recommends that the requested Amendment #2 be APPROVED, subject to the following conditions:

1. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
2. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.
3. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
4. The development of this property shall proceed in accordance with the development plan as recommended as approved by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
7. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area has commercial uses on the four corners of Central and Rock Road, although none of the other uses involve outdoor display/storage. The commercial activities include two grocery stores, free-standing retail stores, three small retail centers, several restaurants on outparcels, two banks, and two service stations. The residential areas are to the northwest, west, and south. They are buffered and screened from existing commercial uses. The proposed nursery and garden center is separated from the nearest residential areas by existing commercial structures.
2. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years.
3. Extent to which removal of the restrictions will detrimentally affect nearby properties: There should be no effects beyond visibility of display areas for landscape plants and materials to traffic travelling along Rock Road.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan.
5. Impact of the proposed development on community facilities: The addition could potentially generate additional congestion on Central and Rock Road by increasing the number of retail functions in the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lane on Central and Rock and access controls should help accommodate additional traffic generated by the nursery and garden center.

**GOLTRY** "This item is one of 5 requests that are identical in the type of Conditional Use they are requesting as part of their C.U.P. amendments. There are 5 different sites involved, so what I thought I would do, in the interest of expediting the comments, is to give a general background on what it is that the applicant is requesting, which is the Dillons store. They are requesting seasonal nursery and garden centers to be located in their parking lots. Then we can go back through and flip through the slides of each of the sites and if you have any particular questions on the sites, we can address those or any questions on Dillons in general.

**MARNELL** "I am going to make a motion on this. I am going to move that we approve it as it is. This happens to be a location that I am very familiar with. I am in and out of there more than I probably would like to admit. That greenhouse has been there for the last several years, I don't know how many, and I have been in and out of that more than I would like to admit."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The area has commercial uses located on all corners of Harry and Webb Road, although none of the other uses involve outdoor display/storage. The commercial activities include the Dillons, small retail/office centers, and several restaurants. The proposed nursery and garden center is separated from the nearest residential areas by existing commercial structures. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years. Extent to which removal of the restrictions will detrimentally affect nearby property: The location at the corner of the Dillons parcel would make the outdoor display use highly visible to traffic on both arterial streets. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on Harry and Webb by increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The seasonal nursery and garden center shall be located in a temporary structure and shall operate for no more than 120 days during a calendar year.
2. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
3. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.
4. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

**MARNELL** moved, **HENTZEN** seconded the motion.

**MICHAELIS** "I am probably not going to vote against this, but I would like to make a comment that these are the kind of things that we are shown as slides when we come into Kellogg and we have a big brown cow that we see and we think that is detrimental to City planning and everything else. This is really kind of the same thing. In this case, we are kind of taking half of a balloon and setting it out there, and when you get it right on an arterial like that, I just don't think it is good planning. I think it could be someplace else. That is just my comment."

**GAROFALO** "Do you want to ask the applicant if they could move it?"

**MICHAELIS** "Is there any other location there where it could go?"

**ERICKSON** "That greenhouse has been there for several years, I think about day No. 1. One of the restrictions we do have at that location is directly to the north, I see there is no slide up now, directly to the north across the driveway approach off of Rock Road, there is what is what is classified as a 'no-build' zone in there. That was a covenant that was put in by the owner of the restaurants up on the corner, so we can't have any structures to the north of our driveway.

And here again, for traffic circulation on the property, visibility, we like to have the visibility, that is what brings the people in. We have felt for our purposes, a retail establishment, that where we have it located is best."

**GAROFALO** "Is there any other discussion? Okay."

**VOTE ON THE MOTION:** The motion carried with 13 votes in favor. There was no opposition. McKay abstained.

**BARFIELD** "I have to ask this because I have seen it happen more than once. I want to ask Commissioner Michaelis if you have such a strong feeling against a particular application, why do you go ahead and stress that you are probably not going to vote against it? What kind of a message does that send to the applicant?"

**MICHAELIS** "Do you really want me to answer that?"

**BARFIELD** "I would appreciate it."

**MICHAELIS** "Because it was very clear that whether I voted against it or not, it was going to pass, and I didn't vote. I abstained, so you didn't hear me say yes."

**KROUT** "That will be recorded as a vote to approve."

**MICHAELIS** "Okay."

**BARFIELD** "I am just saying that you are sending a message of disapproval. Everybody votes the way they want, but I just had that question because I have seen it happen more than once, and I just don't understand."

**GAROFALO** "You did understand that Commissioner McKay abstained on all of those?"

**PLATT** "Marvin, does it say in the bylaws that abstaining is a yes vote?"

**KROUT** "Well, if you abstain without declaring a conflict of interest.

**GAROFALO** "That is what he said."

**KROUT** "So, this will be counted as an approval vote."

**HENTZEN** "If you abstain and it happens to go down, does your vote go with the down or with yes."

**KROUT** "Goes with the down."

**HENTZEN** "That is what I thought, it goes with the majority."

**KROUT** "Yes, with the majority, right."

**HENTZEN** "When you just keep quiet."

**KROUT** "Right."

**JOHNSON** "Marvin, if we don't abstain, I thought we had to vote one way or the other."

**KROUT** "Well, if you don't have a valid reason for declaring a conflict of interest and abstaining from the vote, then whether you are saying you are abstaining or not, we will count your vote as a majority vote."

**CARRAHER** "Is that listed as a rule that you can't abstain anywhere?"

**MARNELL** "Yes it is, that is the City's regulations."

**KROUT** "It is general practice in parliamentary procedure, and Robert's Rules and we do refer to Robert's Rules."

**CARRAHER** "Robert's Rules say that you can abstain any time. Abstaining is a legitimate concern. Granted you shouldn't do it, but it is legitimate. You can use it. If you don't feel that you are knowledgeable about an issue or have a conflict of interest."

**KROUT** "It is probably in the regulations for all City boards. It is the City's Code."

13. **Case No. DP-63 Amendment #1** – Dillon Stores (owner); PEC, c/o Rob Hartman (agent) requests an amendment to add nursery and garden center to uses permitted in Parcel 1 of DP-63 Smith Center C.U.P., described as:

Lot 17, Block 1, Westlink Village Eleventh Addition, Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of 13<sup>th</sup> Street North and Tyler Road.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant proposes to amend DP-63 Smith Center Community Unit Plan in order to operate a seasonal nursery and garden center on a 0.3 acre portion of Parcel 1 that is currently zoned "LC" Limited Commercial. Nurseries and garden centers that do not meet the outdoor display and storage restrictions of the "LC" Limited Commercial district are permitted only as a "Conditional Use." When the proposed location of the "Conditional Use" is within a C.U.P., review of the request is handled as an amendment to the C.U.P.

The nursery/garden center is situated at the southeast corner of Parcel 1 of Smith Center C.U.P. The remainder of the 6.6± acre tract is occupied by Dillons Super Store and parking. The greenhouse is 21' X 72' in size, surrounded by seasonal retail area for outdoor storage plants and landscape supplies. A fence encloses the outdoor display area. The overall size of the nursery/garden center is 0.3 acres and eliminates 57 parking spaces. However, total parking provided after removal of 57 spaces would still exceed required parking requirements significantly, including requirements for the garden center.

The main change proposed to the C.U.P. is to add nursery and garden center per the Unified Zoning Code requirements of Section III-D.6.z. These requirements stipulate that garden centers should be located on arterial streets or expressways, be screened when adjacent to residential zoning districts, and have display/storage areas within an enclosed building or screening fence (if required) or be adjacent to the building. Additionally, the display/storage areas should not be within 25 feet of the right-of-way or be located within required parking spaces. Other restrictions include: having lights shielded away from adjoining properties, prohibiting string lights, prohibiting sound projecting devices or loudspeakers that could be heard beyond the property boundaries, and prohibiting the outdoor repair or servicing of vehicles and equipment. A site plan is required that shows the location of structures, ingress/egress, off-street parking, loading, on-site circulation, and designates storage/display areas. One final aspect of this section is the provision that MAPC may establish other conditions it deems necessary for the protection of adjacent property, and including the maintenance of property. It can also require periodic reports of compliance to be prepared.

The proposed C.U.P. for Smith Center addresses site requirements. There is no separate provision for loading/unloading at the garden center site, but would use the adjacent parking area. The C.U.P. adheres to restrictions, such as lighting, by reference to Section III-D.6.z of the UZC.

Smith Center is developed with a Dillons store as the only tenant. There are duplexes to the north and west, retail uses and townhouses to the south, Wichita High School Northwest to the southeast, and Albertson's and other commercial uses to the east.

**CASE HISTORY:** DP-63 Smith Center C.U.P. was approved March 19, 1974. It is part of Westlink Village 11<sup>th</sup> Addition platted April 24, 1974.

**ADJACENT ZONING AND LAND USE:**

NORTH: "MF-18" Multi-Family;	Duplexes
SOUTH: "LC" Limited Commercial	Commercial uses, townhouses
EAST: "LC" Limited Commercial;	Albertson's, commercial strip center
WEST: "MF-29" Multi-Family;	Duplexes

**PUBLIC SERVICES:** This site has access to Tyler Road, a four-lane arterial, and 13<sup>th</sup> Street North, a four-lane arterial, with left-turn lanes, right turn/accel/decel lanes. 1997 ADTs were 15,653 on 13<sup>th</sup> Street North. Municipal water and sanitary sewer, services are available.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area for commercial use. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

**RECOMMENDATION:** Based on information available prior to the public hearing, Staff recommends that the requested Amendment #1 be APPROVED, subject to the following conditions:

8. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
9. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.

10. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
11. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
12. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
13. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
14. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

2. The zoning, uses and character of the neighborhood: The area has commercial uses located on three corners of 13<sup>th</sup> Street North and Tyler Road, although none of the other uses involve outdoor display/storage. The other corner is the location of a high school. The proposed nursery and garden center is located near the corner of the intersection and separated from the nearest residential areas by existing commercial structures or by rear-lot orientation of the townhouses.
5. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years.
6. Extent to which removal of the restrictions will detrimentally affect nearby property: The location at the corner of the Dillons parcel would make the outdoor display use highly visible to traffic on both arterial streets.
7. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan.
5. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on 13<sup>th</sup> Street North and Tyler Road by increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.

**GOLTRY** "This item is one of 5 requests that are identical in the type of Conditional Use they are requesting as part of their C.U.P. amendments. There are 5 different sites involved, so what I thought I would do, in the interest of expediting the comments, is to give a general background on what it is that the applicant is requesting, which is the Dillons store. They are requesting seasonal nursery and garden centers to be located in their parking lots. Then we can go back through and flip through the slides of each of the sites and if you have any particular questions on the sites, we can address those or any questions on Dillons in general.

I will say CPO 5 on the one at 13<sup>th</sup> and Tyler, there was one CPO member who expressed reservation with the location of that site because it is so close to the corner at Tyler and 13<sup>th</sup>, and he thought it was too highly visible. His argument was to contrast that with the one at Central and Maize where the Walgreen's Express store kind of screens, if you will, the operation from the corner.

I don't think he was meaning that it wasn't visible, I think he was meaning that it was too visible, although he wasn't real clear on that point."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The area has commercial uses located on all corners of Harry and Webb Road, although none of the other uses involve outdoor display/storage. The commercial activities include the Dillons, small retail/office centers, and several restaurants. The proposed nursery and garden center is separated from the nearest residential areas by existing commercial structures. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years. Extent to which removal of the restrictions will detrimentally affect nearby property: The location at the corner of the Dillons parcel would make the outdoor display use highly visible to traffic on both arterial streets. Conformance of the requested change to the adopted or recognized Comprehensive Plan



and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on Harry and Webb by increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The seasonal nursery and garden center shall be located in a temporary structure and shall operate for no more than 120 days during a calendar year.
2. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
3. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.
4. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

**WARREN** moved, **CARRAHER** seconded the motion, and it carried unanimously (13-0). McKay abstained.

-----

14. **Case No. DP-129 Amendment #1** – Dillon Stores (Owner); PEC, c/o Rob Hartman (Agent) requests amendment to add nursery and garden center to permitted uses in Parcel 2 of DP-129 maize Road Development C.U.P., described as:

Lot 2, Block 1, Central-Maize 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Central and Maize Road.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant proposes to amend DP-129 Maize Road Development Community Unit Plan in order to operate a seasonal nursery and garden center on a 0.4 acre portion of Parcel 2 that is currently zoned "LC" Limited Commercial. Nurseries and garden centers that do not meet the outdoor display and storage restrictions of the "LC" Limited Commercial district are permitted only as a "Conditional Use." When the proposed location of the "Conditional Use" is within a C.U.P., review of the request is handled as an amendment to the C.U.P.

The nursery/garden center is situated along Central near the bank at the intersection. The remainder of the 8.6± acre tract is occupied by Dillons Super Store and parking. The greenhouse is 21' X 72' in size, surrounded by seasonal retail area for outdoor storage plants and landscape supplies. A fence encloses the outdoor display area. The overall size of the nursery/garden center is 0.4 acres and eliminates 44 parking spaces. However, total parking provided after removal of 44 spaces would still exceed required parking.

The main change proposed to the C.U.P. is to add nursery and garden center per the Unified Zoning Code requirements of Section III-D.6.z. These requirements stipulate that garden centers should be located on arterial streets or expressways, be screened when adjacent to residential zoning districts, and have display/storage areas within an enclosed building or screening fence (if required) or be adjacent to the building. Additionally, the display/storage areas should not be within 25 feet of the right-of-way or be located within required parking spaces. Other restrictions include: having lights shielded away from adjoining properties, prohibiting string lights, prohibiting sound projecting devices or loudspeakers that could be heard beyond

the property boundaries, and prohibiting the outdoor repair or servicing of vehicles and equipment. A site plan is required that shows the location of structures, ingress/egress, off-street parking, loading, on-site circulation, and designates storage/display areas. One final aspect of this section is the provision that MAPC may establish other conditions it deems necessary for the protection of adjacent property, and including the maintenance of property. It can also require periodic reports of compliance to be prepared.

The proposed C.U.P. for Maize Road Development addresses site requirements except for provision for loading/unloading, which would be done on the adjacent parking area. The C.U.P. adheres to restrictions, such as lighting, by reference to Section III-D.6.z of the UZC.

Dillons is the only tenant on Parcel 2. There is a pharmacy on Parcel 1. Additional retail uses are located to the north, northeast, and east, with single-family residences located to the southeast across Maize Road. The property to the south (Parcel 3 of Maize Road Development) is undeveloped but zoned "LC." An assisted living unit for the elderly is south of the vacant parcel. The Cowskin Creek is located to the west of Maize Road Development. A large portion of the rear of Parcel 2 and Parcel 3 are set aside for drainage. This should not impact the proposed garden center use since the garden center is at the northeast portion of the parcel.

**CASE HISTORY:** DP-129 Maize Road Development C.U.P. was approved June 14, 1983. It was platted as Central-Maize Addition on June 6, 1984.

**ADJACENT ZONING AND LAND USE:**

NORTH: "MF-18" Multi-Family;	Bank, restaurant, strip center
SOUTH: "LC" Limited Commercial	Vacant parcel, assisted living for elderly
EAST: "LC" Limited Commercial;	Office, retail, single-family
WEST: "MF-29" Multi-Family;	Multi-family

**PUBLIC SERVICES:** This site has access to Maize Road, a four-lane arterial, and Central, a four-lane arterial, with left-turn lanes, right turn/accel/decel lanes. 1997 ADTs were 9,987 on Central and 12,418 on Maize Road. Municipal water and sanitary sewer, services are available.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area for commercial use. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

**RECOMMENDATION:** Based on information available prior to the public hearing, Staff recommends that the requested Amendment #1 be APPROVED, subject to the following conditions:

1. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
2. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.
3. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
4. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
7. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area has commercial uses located on all corners of Maize Road and Central, although none of the other uses involve outdoor display/storage. The proposed nursery and garden center is separated from the nearest residential areas by existing commercial structures.

2. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: There should be no effects beyond visibility of display areas for landscape plants and materials to traffic travelling along Central.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan.
5. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on Central and Maize Road by increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The area has commercial uses located on all corners of Harry and Webb Road, although none of the other uses involve outdoor display/storage. The commercial activities include the Dillons, small retail/office centers, and several restaurants. The proposed nursery and garden center is separated from the nearest residential areas by existing commercial structures. The suitability of the subject property for the uses to which it has been restricted: This site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years. Extent to which removal of the restrictions will detrimentally affect nearby property: The location at the corner of the Dillons parcel would make the outdoor display use highly visible to traffic on both arterial streets. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan. Impact of the proposed development on community facilities: The addition could potentially generate additional traffic on Harry and Webb by increasing the number of retail functions operating within the C.U.P. The total amount of building coverage for the C.U.P. is still well below that allowed. The existing accel/decel lanes and access controls should help accommodate additional traffic generated by the nursery and garden center.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The seasonal nursery and garden center shall be located in a temporary structure and shall operate for no more than 120 days during a calendar year.
2. Display and storage of merchandise, nursery stock, landscaping materials must be within an enclosed building or within an area designated on the C.U.P. and approved by the Planning Commission.
3. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code.
4. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Metropolitan Area Planning Commission and/or Governing Body, or the request shall be considered denied and closed.

**GOLTRY** "This item is one of 5 requests that are identical in the type of Conditional Use they are requesting as part of their C.U.P. amendments. There are 5 different sites involved, so what I thought I would do, in the interest of expediting the comments, is to give a general background on what it is that the applicant is requesting, which is the Dillons store. They are requesting seasonal nursery and garden centers to be located in their parking lots. Then we can go back through and flip through the slides of each of the sites and if you have any particular questions on the sites, we can address those or any questions on Dillons in general.

**WARREN** moved, **CARRAHER** seconded the motion, and it carried unanimously (13-0). McKay abstained.

-----

- 15a. Case No. SCZ-0796** - Ritchie Investment Company, c/o Jim Stockton (owner); Westar Development Company, Inc., c/o Chris Khouri (contract purchaser); Baughman Company c/o Terry Smythe (agent) requests zone change from "SF-20" Single-family Residential and "LC" Limited Commercial to "LC" Limited Commercial; and
- 15b. Case No. DP-250** – Ritchie Investment Company, c/o Jim Stockton (owner) Westar Development Company, Inc., c/o Chris Khouri (contract purchaser) Baughman Company c/o Terry Smythe (agent) request the creation of Starwest Community Unit Plan on property described as:

Beginning at the SE corner of the SE 1/4 of Sec. 28, Twp. 26-S, R-1W, of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; FIRST COURSE, thence north along the east line of said SE 1/4, 913.53 feet to a point 403.43 feet south of the NE corner of the S 1/2 of said SE 1/4, SECOND COURSE, thence west, 1159.52 feet to a point 395.08 feet south of the north line of the S 1/2 of said SE 1/4, as measured parallel with the east line of said SE 1/4; THIRD COURSE, thence continuing west along the previously described SECOND COURSE, as extended west, 340.48 feet to a point 1500.00 feet west of the east line of said SE 1/4 as measured along the previously described SECOND and THIRD COURSES; FOURTH COURSE, thence south parallel with the east line of said SE 1/4, 923.71 feet, more or less, to a point on the south line of said SE 1/4; FIFTH COURSE, thence east along the south line of said SE 1/4, 1499.94 feet, more or less, to the point of beginning, subject to road right-of-way of record. Generally located on the northwest corner of 37<sup>th</sup> Street North and Ridge Road.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report;

**BACKGROUND:** The applicant is requesting the creation of a Community Unit Plan for 28.5 acres at the northwest corner of 37<sup>th</sup> Street North and Ridge Road, with the entire C.U.P. being zoned "LC" Limited Commercial. The majority of the site is currently zoned "SF-20" Single-Family; however, 6.7 acres located nearest the intersection of 37<sup>th</sup> Street North and Ridge Road already are zoned "LC".

The proposed C.U.P. has six parcels. Parcel 1 is the main tract and would be 20 acres in size. It is situated behind Parcels 2, 3, 4, and 5, which are just over an acre in size each, and are located along the arterial frontage on Ridge Road and along 37<sup>th</sup> Street North near Ridge. Two major openings are shown for Parcel 1. The opening onto Ridge is a 100-foot space situated between Parcels 2 and 3. The major opening onto 37<sup>th</sup> is located roughly in the middle of the parcel, but is less than the desired 400-foot separation with the joint opening. The applicant has agreed to shift the major opening to the west by 40 feet.

Parcel 6 is 3.44 acres and is limited to serving as a drainage and open space reserve to provide for the Big Slough North as it flows through the western edge of the application area. A large portion of the property was shown as being in the 100-year floodplain based on 1986 flood maps.

The applicant proposes each parcel to permit all uses in the "LC" zoning district except for adult entertainment establishments, group homes, group residential, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor would be permitted as long as food was the primary service of the establishment. All uses that require "Conditional Use" permits in the "LC" districts would be permitted only by amending the C.U.P.

Each parcel would be limited to 30 percent maximum building coverage and 35 percent floor area ratio. All buildings would be limited to 35 feet in height. Setbacks along streets are shown at 35 feet on property lines of the C.U.P. except for Parcel 1 with a 100-foot setback for the main parcel. A screening wall six feet in height constructed of masonry would be required along the northern property line where the adjacent property is zoned for residential use. Landscaping would include a landscape buffer along the northern and western property lines, and landscape street yards along 37<sup>th</sup> Street North and Ridge Road.

Signage restrictions would prohibit flashing signs (except time and temperature and public message displays), rotating or moving signs, signs with moving lights or that create illusions of movement; portable signs and off-site signs, signs on the rear of buildings, and window display signs in excess of 25 percent of window area. Parcels 2, 3, 4, and 5 each would be permitted one ground sign along the arterial where the parcels have frontage, with maximum sign area as follows: Parcel 2, 170 square feet; Parcel 3, 170 square feet; Parcel 4, 200 square feet; and Parcel 5, 160 square feet. It is proposed that Parcel 1 be permitted a total of two freestanding signs, one each on Ridge and 37<sup>th</sup>. If the parcel were to be developed with a single tenant, the signs would be limited to 200 square feet of sign area on each frontage; if it were to be developed with multiple tenants, the signs would be limited to 300 square feet of sign area on each frontage. The amount of sign area requested for Ridge exceeds guidelines for free-standing sign area in the "LC" district, however the amount requested for 37<sup>th</sup> Street is less than allowed. The overall amount of signage requested falls within "LC" guidelines for freestanding signs.

All freestanding signs would be of a monument type, with a maximum height of 20 feet for Parcels 2, 3, 4, and 5 and would be 30 feet for Parcel 1. A suggested definition of a monument sign, until the Sign Code is amended, is that it be a detached sign where the width of the base of the sign is at least ½ of the width of the widest part of the sign face, or where the base consists of two or more supports where the sign face is not more than two feet above the average grade of the ground. The materials

of the base shall be one of the following: masonry, wood, anodized metal, stone or concrete. A monument sign shall harmonize with the architecture of the structure or complex it serves and be constructed of materials consistent with the same.

The applicant proposes all parcels share a uniform architectural character, color, texture, and the same predominant exterior building material. The applicant proposes similar or consistent lighting elements, with the height of light poles to be 24 feet. Extensive use of backlit canopies and neon or fluorescent tube lighting on buildings is not permitted.

The applicant proposes access via one major opening, one joint opening, and one additional opening on both Ridge Road and on 37<sup>th</sup> Street North, for a total of six openings.

The application area is undeveloped agricultural land. It is located in an area that is undergoing urban development. The tract to the southeast of 37<sup>th</sup> and Ridge, DP-237 Ridgeport C.U.P. is being developed with medical offices and is the proposed site for a new hospital facility for Via Christi. Housing, offering a range of densities and types is being developed in the area surrounding Ridgeport C.U.P. The property immediately to the south of the application area is undeveloped, but was the subject of two recent zoning/C.U.P. cases. DP-242, Ridge Centre C.U.P. was approved for 17.15 acres of "GO" General Office and "NR" Neighborhood Retail uses. Ridge Centre is located on the southwest corner of 37<sup>th</sup> and Ridge, immediately to the south of Parcels 4, 5 and part of Parcel 1. Another application has been filed, but deferred, for a "B" Multi-Family project. The property to the east of Ridge is still in agricultural use. The property to the north is primarily agricultural, with two suburban residences and a "NR"/"Conditional Use" for a greenhouse along Ridge Road. The application area is only one-half mile south of the interchange of Ridge Road and K-96.

**CASE HISTORY:** The application area is unplatted. A "Conditional Use" for sand and gravel extraction (CU-366) was approved for the area on April 20, 1994. It does not appear to be in active operation.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20"; "NR"	Large-lot residential, agricultural, greenhouse
SOUTH: "SF-20"; "LC"	Vacant (DP-242 Ridge Centre)
EAST: "SF-20"; "LC"	Agricultural, DP-237 Ridge Port North under development with office/commercial
WEST: "SF-20"	Agricultural

**PUBLIC SERVICES:** The property is located along two major arterial streets, 37<sup>th</sup> Street North and Ridge Road. Ridge was recently reconstructed to four-lane standards. 37<sup>th</sup> Street is still an unpaved county road. Traffic volumes along Ridge Road in 1997 were 7,717 ADTs (average daily traffic). This was projected to increase to 15,275 ADTs in the 2020 Transportation Plan, but this projection did not anticipate the volume of development occurring in the vicinity (Via Christi, Ridge Centre, etc). This project could be projected to increase traffic on Ridge Road both to the north and south by as much as 9,000 ADTs, were it developed to the maximum square footage of commercial use requested by the applicant. 37<sup>th</sup> Street North is not scheduled for improvement.

Recommended traffic improvements include: (1) improving 37<sup>th</sup> Street along the property frontage, (2) providing right and left turn decel and storage lanes from the intersections to the major openings along both Ridge and 37<sup>th</sup>, and (3) making the joint driveways between Parcels 3 and 4 and Parcels 4 and 5 "right-in/right-out" only. Alternatively, the applicant could provide raised medians from the intersection to beyond the joint openings. The applicant would be requested to share in the cost of intersection signalization, 12.5 percent, which is the same percentage agreed to by the developers on the southeast and southwest corners of Ridge and 37<sup>th</sup>.

In terms of road alignment, the development of this property is viewed as part of a larger urbanizing area extending from K-96 southward to 37<sup>th</sup> and from Ridge westward to the Big Slough North. In that context, the development of a north-south collector street along the western edge of Parcel 1 connecting to the rear of the parcels to the north, which are expected to convert to commercial zoning and use in the future, would improve circulation options and reduce congestion on Ridge Road. The applicant is being requested to dedicate right-of-way for a collector street to be aligned somewhere along the western portion of the C.U.P. as part of the platting process. Perhaps the preferred alignment would be one that replaces the major opening with a public street.

Water and sewer services are not currently available to the property. The applicant will need to guarantee extensions for water and sewer services.

**CONFORMANCE TO PLANS/POLICIES:**

The Land Use Guide of the Comprehensive Plan identifies this area for "agricultural" use. However, the continued northern expansion of urban development and recent widening of Ridge Road, the proximity of the K-96 freeway interchange, and the ultimate plan to extend sewer service to that freeway suggests that this area is becoming ripe for urban development.

The commercial locational guidelines recommend that commercial uses be located in "planned centers" with site design features which limit noise, lighting, and other activities so as not to adversely impact surrounding residential areas. Also, the planned centers should be oriented to minimize traffic impact due to its location in relation to major traffic routes and the use of shared access points. The development of out parcels should be integrated in relation to planned retail centers through shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress. The proposed C.U.P. adheres to these recommended locational guidelines, with the exception that the amount of signage is greater than would be allowed in commercial zones without a C.U.P., and no justification has been provided.

**RECOMMENDATION:**

The application area is located at the first major intersection on Ridge south of K-96. The area to the southeast is under development as a major medical campus, surrounded by residential development with a range of housing types. The area to the south is approved for office/ neighborhood retail uses. All corners of the intersection were previously zoned "LC" for commercial use. Based on these conditions, plus the information available prior to the public hearing, staff feels that this area offers a potential site for future commercial development and recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (SCZ-0796) to "LC" Limited Commercial, subject to platting of the entire property within one year.
- B. APPROVE the Community Unit Plan (DP-250), subject to the following conditions:
  1. The following transportation improvements shall be provided:
    - A. A continuous right-turn decel and a left-turn storage lane shall be provided from the intersection to the major entrance on 37<sup>th</sup> Street North and the major entrance on Ridge Road.
    - B. The joint openings between Parcels 3 and 4 and Parcels 4 and 5 shall be limited to right-in/right-out only, or a guarantee shall be provided for future construction of a raised medial if the Traffic Engineer deems necessary.
    - C. The major opening on 37<sup>th</sup> Street North shall be separated by at least 400 feet from the joint opening between Parcel 4 and 5.
    - D. A street right-of-way generally located on the western portion of Parcel 1 shall be provided to connect the property to the north of the application area with 37<sup>th</sup> Street North and shall be shown on the revised C.U.P., and a guarantee for paving shall be provided.
    - E. A guarantee shall be provided for paving along the frontage of 37<sup>th</sup> Street North.
    - F. The application shall guarantee 12.5 percent of the cost of signalization of the intersection of 37<sup>th</sup> Street North and Ridge.
  2. No development shall occur until such time as municipal water and sewer services are provided to the site.
  3. General Provision #3 shall be revised to state that parking shall be in accordance with Article IV of the Unified Zoning Code.
  4. A general provision shall be added to state that prior to issuing building permits, a plan for a pedestrian walk system shall be submitted and approved by the Director of Planning. This walk system shall link sidewalks along Ridge Road and 37<sup>th</sup> Street with the proposed buildings within the subject property as determined necessary by the Director of Planning.
  5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
  7. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
  8. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-250) includes special conditions for development on this property.
  9. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of this area is changing. Office/medical uses are being developed to the southeast, and office, neighborhood retail uses are approved for development to the south. There is an application for multi-family development to the south. There is single-family, duplex and apartment development occurring to the southeast. The tract to the west is separated from this site by the Big Slough North and remains agricultural in use. The tract to north is large lot suburban, agricultural, and a neighborhood retail use, but could be anticipated to be developed more intensively northward to K-96, as could the land east of Ridge between 37<sup>th</sup> and K-96 which is still in agricultural use.
2. The suitability of the subject property for the uses to which it has been restricted: A portion of the application area is already zoned "LC" Limited Commercial and could be developed as a C.U.P. The property could remain agricultural, but would more likely be developed with at least urban densities of residential development. The presence of office/commercial activity nearby makes low density "SF-20" residential development seem out of character and below desirable density levels for orderly urban expansion.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this C.U.P. will increase the likelihood that other properties to north, east and west seek to be developed more intensively.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this area as agricultural, however, changing factors have pointed to the need to reconsider that designation, as discussed earlier. The Comprehensive Plan recognizes that new growth will require the development of additional commercial areas to meet the convenience and shopping needs of new residents. The Land Use Guide indicates that arterial intersections such as this should be expected to accommodate retail commercial development.
5. Impact of the proposed development on community facilities: The site will have a significant impact on community facilities. However, through the required guarantees for street and other infrastructure improvements and provision for future street alignments, this impact should be adequately handled.

**GOLTRY** "I have placed on your chair a blue memo that is Agenda Item 15a and 15b, which I believe reflects language that would be something that the applicant would agree to. We will ask the applicant to speak directly to this. This is still agriculture and is outside the boundary lines of urban development, but we know that it is developing, and the decisions we have made cumulative to this point along Ridge Road certainly would lend credence to the idea that this is an appropriate idea that this would be 'LC' property. Recommendations include the transportation improvements that I have already enumerated, with Item D being the one that we have provided the alternate language for and that we will discuss. We also asked that they add a pedestrian walk system to their proposed site plan. I will stand for questions."

**PLATT** "What is the staff's response to the proposal you passed out?"

**GOLTRY** "I might let Marvin respond to this as well, but we feel that if we are provided the two locations at the north, both one toward the east of the property, one more toward this area and one more back toward that area and that this access is available to all parcels that develop to the north of the property, that this would probably address the needs for providing access to the properties to the north. If you look at the aerial, just the straight aerial, there are a lot of long, skinny parcels along here, and then you have a natural barrier here. So the development area we are talking about has a natural barrier on the west; it has a barrier on the north in the form of K-96; it is highly visible and accessible property, so it seems likely that no doubt we will be seeing future applications for development in this area. Then it has Ridge and it is just allowing more of a circulation system, and that would address that."

**WARREN** "Would this provide for specific areas of opening but the fact that they would be amenable to two of them that would go off of that?"

**GOLTRY** "Actually, we did specify that it would be reviewed by MAPD to ensure smooth vehicular circulation because we didn't want just two openings there that didn't really go anywhere and didn't really address these needs. Because we are concerned that there is a need to provide access to those properties."

**OSBORNE-HOWES** "Just a quick question. Parcel No. 1, wasn't that pretty much a raging river during the flood we had about a year ago? It seems like I saw some pictures at the time, and that was more than just under water. I just wondered if you had talked about the ability to build on that?"

**GOLTRY** "We have, and the applicant is aware of the fact that there is some engineering to do here to be able to compensate for the fact that there is flood prone property on the site. I think probably the applicant can speak to that better than I can."

**GAROFALO** "Are there any other questions? Okay, then we will hear from the applicant."

**PHIL MEYER** "I am with the Baughman Company, agent for the applicant. With me here today is Rob Ramseyer, representing the applicant, if you have any questions of him."

Basically I will try to keep this brief. Donna went over all of the issues. We are in agreement with staff comments, with the exception of 1d. The substitute condition that she supplied you with, we are in agreement with. We really don't want to dedicate a road along the west side of this. We are more than willing to supply two means of access to the property to the

north. If you can approve this with this revised condition, we would be fine with that. If you have questions, I will be glad to explain in more detail why we are really opposed to that.

Parcel No. 6 is in the floodway and that is why that is established as a Parcel No. 6. It is floodway ground that we are not going to develop on. You will notice that we have allowed for no development on Parcel No. 6. We have asked to go ahead and zone Parcel No. 6, and we did that intentionally so that if, at a later date the floodway is revised or changed, or remapped, the land is zoned and we can adjust the parcels appropriately. But if it remains the way it is mapped today, it will not be developed per this parcel.

We know that there is floodplain on our property and as we go through the platting process, we will work with the appropriate governmental bodies to meet all of the requirements and conditions of that.

We are in agreement with the traffic improvements as listed. More than likely on Item 1b, leaning towards the guarantee for a raised median on the intersection rather than the right turn in our out, but we like the option and would like to leave it that way, depending on how it develops, we can go either way. So we would like for you to approve it with the two conditions. With that, and with the fact that we are in agreement with staff on all of these issues except 1d, I am going to go ahead and open this up to questions."

**GAROFALO** "Okay. Are there any questions of Phil?"

**WARREN** "On your joint access, you say that you would like to have the option of either a right-turn only or a raised median? Those are the two options you want to have?"

**MEYER** "The joint access that occurs (indicating) right here, and right here, we were given two choices. Either those drives are right-turn in, right-turn out only, or we supply a guarantee for a future raised median in Ridge Road and 37<sup>th</sup> Street. We like it set up with those two options."

**WARREN** "Okay."

**GAROFALO** "Are there any other questions? Thank you. Is there anyone else to speak on this item? For or against? Okay, we will bring it back to the Commission."

**WARREN** "Before I make a motion, I would like to hear from Marvin on the request he made for flexibility on this."

**KROUT** "Are you talking about the right-turn only?"

**WARREN** "Yeah. Do we have the authority to say that he can go ahead and build a median?"

**KROUT** "The City or the County does have the right at any time to go in and build a median on a street when they think it is warranted. We have recently been requiring the right-turn only as a solution and realize that maybe that is not the right solution ultimately, and maybe it is not going to be warranted for many years. So instead, what we are asking is that the applicants submit a petition that we would hold and then only if and when the Traffic Engineer would find in the future that traffic conditions and accidents warrant the construction of a medial, then it would be placed. Otherwise there would be full turning that would be permitted out of that opening. I think that is probably a better solution in most of these cases than to build a right turn in and out only, although we are offering that as an option for the applicant, if they prefer to do that."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of this area is changing. Office/medical uses are being developed to the southeast, and office, neighborhood retail uses are approved for development to the south. There is an application for multi-family development to the south. There is single-family, duplex and apartment development occurring to the southeast. The tract to the west is separated from this site by the Big Slough North and remains agricultural in use. The tract to north is large lot suburban, agricultural, and a neighborhood retail use, but could be anticipated to be developed more intensively northward to K-96, as could the land east of Ridge between 37<sup>th</sup> and K-96 which is still in agricultural use. The suitability of the subject property for the uses to which it has been restricted: A portion of the application area is already zoned "LC" Limited Commercial and could be developed as a C.U.P. The property could remain agricultural, but would more likely be developed with at least urban densities of residential development. The presence of office/commercial activity nearby makes low density "SF-20" residential development seem out of character and below desirable density levels for orderly urban expansion. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this C.U.P. will increase the likelihood that other properties to north, east and west seek to be developed more intensively. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this area as agricultural, however, changing factors have pointed to the need to reconsider that designation, as discussed earlier. The Comprehensive Plan recognizes that new growth will require the development of additional commercial areas to meet the convenience and shopping needs of new residents. The



Land Use Guide indicates that arterial intersections such as this should be expected to accommodate retail commercial development. Impact of the proposed development on community facilities: The site will have a significant impact on community facilities. However, through the required guarantees for street and other infrastructure improvements and provision for future street alignments, this impact should be adequately handled.) I move that we recommend to the governing body that the request be approved, subject to the following:

1.
  - A. A continuous right-turn decel and a left-turn storage lane shall be provided from the intersection to the major entrance on 37<sup>th</sup> Street North and the major entrance on Ridge Road.
  - B. The joint openings between Parcels 3 and 4 and Parcels 4 and 5 shall be limited to right-in/right-out only, or a guarantee shall be provided for future construction of a raised medial if the Traffic Engineer deems necessary.
  - C. The major opening on 37<sup>th</sup> Street North shall be separated by at least 400 feet from the joint opening between Parcel 4 and 5.
  - D. Cross-circulation access shall be provided in at least two locations, generally located on the rear of Parcel 2 and near the west edge of Parcel 1. These locations shall be reviewed by MAPD to ensure "smooth vehicular circulation" to 37<sup>th</sup> Street; and with the access being available for use by all future development located north of DP-250, Starwest C.U.P.
  - E. A guarantee shall be provided for paving along the frontage of 37<sup>th</sup> Street North.
  - F. The application shall guarantee 12.5 percent of the cost of signalization of the intersection of 37<sup>th</sup> Street North and Ridge.
2. No development shall occur until such time as municipal water and sewer services are provided to the site.
3. General Provision #3 shall be revised to state that parking shall be in accordance with Article IV of the Unified Zoning Code.
4. A general provision shall be added to state that prior to issuing building permits, a plan for a pedestrian walk system shall be submitted and approved by the Director of Planning. This walk system shall link sidewalks along Ridge Road and 37<sup>th</sup> Street with the proposed buildings within the subject property as determined necessary by the Director of Planning.
5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
7. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
8. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-250) includes special conditions for development on this property.
9. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

**WARREN** moved, **WHEELER** seconded the motion.

**MCKAY** "I need to find out if what Phil said was what the motion was, or what difference there is. I guess I got a little lost there."

**MEYER** "Yes. I am fine with the motion. I just wanted to make sure it included the revised Condition 1d. We are now fine with it."

**MCKAY** "Thank you."

**VOTE ON THE MOTION:** The motion carried unanimously with 14 votes in favor.

-----

Osborne-Howes left the meeting at 1:40 p.m.

16. **Case No. CU-554** – RRGNL, LLC, c/o Jay Russell (owner); Ritchie Development, c/o Rob Ramseyer (contract purchaser); Baughman Company, P.A., c/o Philip J. Meyer (agent) request Conditional Use to allow multi-family development on property described as:

Lots 1-14, Block 2; Lots 1-18, Block 3, Ridge Port Addition, Wichita, Sedgwick County, Kansas. Generally located east of Ridge Road, approximately 1/4 mile north of 29<sup>th</sup> Street North.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a "Conditional Use" for 13.32 acres of property zoned "TF-3" Two-Family. The application area is located east of Ridge Road approximately ¼ mile north of 29<sup>th</sup> Street. Currently, the application area is platted into a total of 32 duplex lots as a part of Ridge Port Addition. If the application would be approved, a total of 70 dwelling units would be allowed in the application area. This would be a net increase in six units over what is currently permitted by right. The density would increase modestly from 4.8 units per acre to 5.26 units per acre. The units would be developed with nine duplexes (18 dwelling units), four triplexes (12 dwellings), and 10 four-plexes (40 dwelling units). The lots would be oriented on a local street, Westwind Bay, with no lots facing Ridge Road or taking direct access from Ridge Road.

The "Conditional Use" approval is required in order to develop triplex and four-plex units on property zoned "TF-3." The Unified Zoning Code establishes the minimum lot size of 3,000 square feet per dwelling unit for multi-family and duplex units, which is a maximum of 14.5 dwelling units per acre, excluding street rights-of-way. The Code also requires a minimum front setback of 25 feet and a maximum height of 35 feet. The Landscape Ordinance required a multi-family development to be separated from single-family districts and two-family districts by a 15-foot landscape buffer.

The property was platted in 1998 with duplex lots. However, when triplexes and four-plexes are incorporated into the site plan, most structures would overlap lot lines on the plat. Replatting the application area to reflect the lot configuration shown on the site plan would avoid the need for repeated boundary shifts and simplify the issuance of building permits.

The site is located immediately to the south of a large parcel being developed as a medical office complex, and that is proposed to include a future regional medical center for Via Christi (DP-237 Ridgeport North C.U.P.). Reserve "C" is located on the east of the application area. This would be a drainage feature (lake), and would separate the site from single-family development under development to the east of the application area. It is part of the drainage plan approved as part of Ridge Port Addition. A pending rezoning request (Z-3344) for "MF-29" Multi-Family to develop apartments is located to the northeast of the lake. The properties to the south of the application area and to the west across Ridge Road are zoned "LI" Limited Industrial.

**CASE HISTORY:** The property is part of the Ridge Port Addition, platted June 8, 1998.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"SF-6" Single-Family	Reserve "C"; proposed apartments;
	"LC" Limited Commercial	vacant commercial parcel (DP 237)
EAST:	"SF-6" Single Family	Lake, residences under construction
SOUTH:	"LI" Limited Industrial	Vacant
WEST:	"LI" Limited Industrial	Vacant

**PUBLIC SERVICES:** The site has access on Ridge Road, a four-lane arterial street via Westwind Bay. Traffic volumes on this segment of Ridge Road in 1997 were estimated to be 7,717 average daily trips (ADTs). The 2020 Transportation Plan estimated that volumes would increase to 15,275 ADTs. Traffic improvements for the 37<sup>th</sup> Street intersection have been delineated as part of DP-237. This 70-unit development would not be anticipated to generate the need for additional traffic improvements. Water and sewer services are being extended to the property.

**CONFORMANCE TO PLANS/POLICIES:** The "Land Use Guide" of the Comprehensive Plan identifies this property as "agricultural." However, the continued northern expansion of urban development and recent widening of Ridge Road, the proximity of the K-96 freeway interchange, and the ultimate plan to extend sewer service to that freeway suggests that this area is becoming ripe for urban development.

**RECOMMENDATION:** The Wichita Land Use Guide encourages higher density residential development to occur in appropriate locations within the new growth/urban reserve areas. The requested "Conditional Use" would yield a medium-density residential development in conformance with these guidelines. Based on these conditions and the information available prior to the public hearing, Staff recommends the application be APPROVED, subject to the following conditions:

1. The application area shall be replatted within one year from approval, with the replat generally reflecting the revised lot configuration shown on the site plan attached hereto.
2. A concrete or masonry wall of not less than six or more than eight feet in height shall be constructed in a five-foot wall easement, as shown on Ridge Port Addition.

3. The site shall be developed in general conformance with the site plan attached to and made a part of this application.
4. Any violation of the conditions approved as a part of this request shall render the "Conditional Use" null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is near DP-237 Ridge Port North C.U.P. to the north, which is undergoing development with medical office uses and neighborhood retail uses. The area to the east beyond the lake and the "Reserve" is being developed in single-family use, with a portion being considered for multi-family use (Z-3344).
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently vacant and could be developed as "TF-3" in the configuration already platted as part of Ridge Port Addition.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" would expand the type of housing permitted to include triplexes and four-plexes, but would not increase density significantly. The large reserve areas and the lake separating the multi-family units from the single-family units to the east, coupled with required landscaping and screening, should mitigate any impacts of the "Conditional Use."
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. However, as discussed earlier, changing factors have resulted in previous zone changes that have significantly altered the composition of development in the area. The proposed "Conditional Use" is in proximity to non-residential development, near a major arterial, and near the K-96 freeway interchange. It will result in a more compact use of land and offer a range of housing types in the Northeast. These are desired characteristics supported by land use objectives of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal, particularly since the "Conditional Use" only results in an increase in six dwelling units.

**GOLTRY** "The applicant on this has already platted the property with 32 duplex units, which would have a yield of a total of dwelling units of 64. This request shows a blend of nine duplexes or triplexes and ten four-plexes for a total of 70 dwelling units. It is a very slight increase in density from 4.8 to 5.26. It is a Conditional Use because it is on zoning that is 'TF-3' but I will say that it does conform to the requirements of that and also point out that they do have some additional requirements that they had to meet, such as a setback of 25 feet, maximum height of 35 feet, and that the Landscape Ordinance would kick in to require landscaping as per landscape buffer when it would be adjacent to 'SF-6' or two-family on the rear, which it is not because it is adjacent to a reserve area. We have also requested landscaping, and we will get into that later, on Ridge Road, as if it were a multi-family development.

The property has already been platted in duplex lots, unfortunately their rearrangement with the triplexes and four-plexes have caused most of the lot lines to be straddled by the new lots, so we have requested that they replat within one year, just to clean up everything. I believe they are in agreement with that.

I would point out, in the staff report under adjacent zoning and land use, that to the north we do have 'SF-6' and 'LC' as stated. To the east 'SF-6', to the south 'LI'. We have on Ridge Road, a four-lane arterial that we just discussed in the previous case. Conformance to the plan and policies is, similar to the situation in the previous case. Shown as agricultural, we know that is going to change. We know that the cumulative decisions in previous cases have led this to be ripe for urban development.

This is a location that is along Ridge Road. It fits in well with their overall development plan for their property. As you know from the previous MAPC case, they have had some rezoning requests for some 'MF-18' as well as some other 'TF-3' on the overall Ridgeport development, so we are getting a range of housing types in there. We have primarily a lot of 'SF-6', which will be large, quite expensive homes going in there.

We have just four conditions and the first I have mentioned about replatting within one year. The second one is one that I have alternate conditions on. The other item I placed on your chair is a requested revision for Item No. 2. In the original Subdivision plat, they did show a concrete wall. I interpreted that to mean that they intended to place a concrete wall. Upon further discussion, they would not want to be locked into placing a concrete wall. We feel it is appropriate to instead replace that with a landscape streetyard provision that would give adequate landscaping along there and then they would have the ability to either do the wall or to do the landscape streetyard. But if they do do a wall, we have requested that either the wall or fence that be installed be done with a uniform construction method and go the length of the property. That is what this replacement condition says 'a landscape streetyard equivalent to that required by the Landscape Ordinance shall be provided along Ridge Road, treating Ridge Road frontage as a single parcel zoned for multi-family use. If a screening wall or fence is constructed along Ridge Road, it shall be constructed along the entire length and be of uniform construction.'

**WARREN** "In Item No. 2, that is just along Ridge Road that you are referring to, not on the back of the property?"

**GOLTRY** "Yes. The back of the property would be the lake. The other two conditions are just conformance with site plan. The findings are listed on pages 3 and 4 and I will stand for questions."

**WARREN** "I think what you are suggesting then, is that you would delete your requirement for a masonry wall in lieu of some good landscaping?"

**GOLTRY** "Yes. We are asking for good landscaping instead, and if they want to do the concrete wall, to do it along the entire length or any kind of screening wall."

**GAROFALO** "Are there any other questions? If not, we will hear from the applicant."

**PHIL MEYER** "I am with the Baughman Company. Mr. Ramseyer is also here with me today on this project. He is the contract purchaser. We will answer any questions you might have. We are in agreement with staff comments with this revised Condition No. 2. We did not really wish to be tied in to the masonry wall, but we are more than willing to do the landscaping that occurs along there."

This is a unique situation in that, since we have an industrial property across the street, we are really, by Code, not required any landscaping. But knowing the corridor along Ridge Road there and how everything is developing, we have no problem and feel that it is appropriate that we do some landscape buffer along Ridge Road and we will be glad to meet the revised conditions here."

**MCKAY** "Phil, on this landscaping, if you don't put a fence in, you know that it says 'one tree every 40 feet'. That is a little sparse in lieu of the fence."

**MEYER** "Well, the way we have calculated this, we basically approached it as one parcel. So we calculated it based on the 20 square feet per linear foot of landscaping. We came out to 43 trees. Our whole point was, when we started discussing this, we are not sure what we are going to do yet. We may do a split rail fence with some landscaping. It may be landscaping and berms, we don't really know how we want to develop it yet, and we didn't want to be tied down to a masonry wall. The way this calculates out, John, there would be 43 trees required along that stretch."

**MCKAY** "I'm saying with your landscaping plans, is that enough?"

**MEYER** "I believe, in this particular situation, and with this developer, how he has developed his past developments, we will have adequate landscaping and it will be a nice looking development."

**GAROFALO** "Are there any other questions? Is there anyone else to speak on this agenda item? Seeing none, we will come back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The site is near DP-237 Ridge Port North C.U.P. to the north, which is undergoing development with medical office uses and neighborhood retail uses. The area to the east beyond the lake and the "Reserve" is being developed in single-family use, with a portion being considered for multi-family use (Z-3344). The suitability of the subject property for the uses to which it has been restricted: The property is currently vacant and could be developed as "TF-3" in the configuration already platted as part of Ridge Port Addition. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" would expand the type of housing permitted to include triplexes and four-plexes, but would not increase density significantly. The large reserve areas and the lake separating the multi-family units from the single-family units to the east, coupled with required landscaping and screening, should mitigate any impacts of the "Conditional Use." Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. However, as discussed earlier, changing factors have resulted in previous zone changes that have significantly altered the composition of development in the area. The proposed "Conditional Use" is in proximity to non-residential development, near a major arterial, and near the K-96 freeway interchange. It will result in a more compact use of land and offer a range of housing types in the Northeast. These are desired characteristics supported by land use objectives of the Comprehensive Plan. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal, particularly since the "Conditional Use" only results in an increase in six dwelling units.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The application area shall be replatted within one year from approval, with the replat generally reflecting the revised lot configuration shown on the site plan attached hereto.
2. A landscape street yard equivalent to that required by the Landscape Ordinance shall be provided along Ridge Road, treating the Ridge Road frontage as a single parcel zoned for multi-family use. If a screening wall or fence is constructed along Ridge Road, it shall be constructed along the entire length and be of uniform construction.
3. The site shall be developed in general conformance with the site plan attached to and made a part of this application.

4. Any violation of the conditions approved as a part of this request shall render the "Conditional Use" null and void.

**GAROFALO** moved, **LOPEZ** seconded the motion, and it carried unanimously (14-0).

-----  
**17a. Case No. SCZ-0797** – John Dugan (owner/applicant) and Tim Austin, Austin Miller PA (agent) request to rezone property from "SF-20" Single-Family to "LC" Limited Commercial and "GO" General Office; and

**17b. Case No. DP-251** – Ubiquity Community Unit Plan for the creation of the Ubiquity Community Unit Plan to allow commercial development, on property described as:

A tract of land beginning at the Southeast corner of the Southeast Quarter of Section 36, Township 26 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence North 905 feet; thence West parallel with the South line of said Southeast Quarter, 1203.32 feet; thence South 905 feet; thence East 1203.32 feet to the place of beginning; EXCEPT the south 50 feet and East 50 feet thereof dedicated for road purposes. Generally located at the northwest corner of 119<sup>th</sup> Street West and 29<sup>th</sup> Street North.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting to rezone a 21.82 acre unplatted tract from "SF-20" Single Family Residential to "LC" Limited Commercial and "GO" General Office and the creation of the Ubiquity Community Unit Plan located at the northwest corner of 29<sup>th</sup> Street North and 119<sup>th</sup> Street West. The site is currently the Coleman Employees' Recreational Facility. As shown on the site plan (attached), the applicant is proposing to split this property into two parcels and one reserve. Parcel 1 (8.73 acres) would be located on the west side of the application area and is proposed for "GO" zoning. Parcel 2 (13.09 acres) would be located on the east side of the application area and is proposed for "LC" zoning. The reserve would be located along the north property line at the site of an existing pond and would be used for drainage and detention purposes.

Parcel 1 is proposed for all uses permitted in the "GO" district except: Correctional Placement Residences, Limited; Correctional Placement Residences, General; Group Home, Limited, General, and Commercial; Recycling Collection Stations; Asphalt or Concrete, Limited; Manufacturing, Limited; Mining or Quarrying; Oil or Gas Drilling; Rock Crushing; Solid Waste Incinerator, and all "Industrial" uses. Parcel 2 is proposed for all "Commercial" uses permitted in the "LC" district. The applicant is also proposing to limit signs to 20 feet in height and be monument type. The proposed signage would be 300 square feet in up to 2 signs on the 29<sup>th</sup> Street North frontage of Parcel 1 and 300 square feet in up to 3 signs on *both* the 29<sup>th</sup> Street North and 119<sup>th</sup> Street West frontage of Parcel 2. A six-foot masonry wall is proposed along the property lines of the C.U.P. where adjacent to residential zoning except for along the reserve area. The proposed access controls do not conform with more recent standards for CUPs because they do not provide for complete access control within 100 feet of the arterial intersection.

Undeveloped land located to the south and east of the site is zoned "SF-20" and is used for agriculture. The property to the north of the site is zoned "SF-20" and is used for large-lot residential development. The property to the west of the site is developed with single family residences and is zoned "SF-20" and platted as the Balmoral Briar Addition and the Creekside Estates Addition. The single-family residences to the north and west are immediately adjacent to the site. The applicant also owns the property on the southeast corner of 29<sup>th</sup> Street North and 119<sup>th</sup> Street West, and this property has been approved (subject to pending platting) for "LC" (10.1 acres) and "NR" (1.9 acres) zoning and the Westridge CUP.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Single family residences on large lots  
SOUTH: "SF-20" Undeveloped agricultural land  
EAST: "SF-20" Undeveloped agricultural land  
WEST: "SF-20" Single family residences on platted lots

**BLIC SERVICES:** There are no current traffic volumes available for either 29<sup>th</sup> Street North or 119<sup>th</sup> Street West. Both section line roads are two-lane with 29<sup>th</sup> Street North having sand or gravel paving and 119<sup>th</sup> Street North having asphalt paving. The County Capital Improvement Program shows reconstruction of 119<sup>th</sup> Street North from 21<sup>st</sup> Street North to 53<sup>rd</sup> Street North in 2002. Municipal services are not available to serve this site. The development of this property will be contingent on municipal services being provided to this site.

**CONFORMANCE TO PLANS/POLICIES:** This area is classified by the Wichita Land Use Guide of the Comprehensive Plan as appropriate for "Suburban" (1 acre minimum lot size) development; however, the update for the Plan, now in progress, shows this area as appropriate for urbanization in the next 10 years. The Comprehensive Plan recognizes that new growth will require the development of additional commercial areas to meet the convenience and shopping needs of new residents. The Land Use Guide indicates that arterial intersections like this should be expected to accommodate retail commercial development.

The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

This site is not within the West Side Commercial Development Policy area, but this CUP does include a number of the appearance standards found within the Policy, although it significantly exceeds the size permitted by that policy.

**RECOMMENDATION:** The site is similar and has the same owner as the Westridge CUP on the southeast corner of 29<sup>th</sup> Street North and 119<sup>th</sup> Street West; therefore, planning staff recommends that this CUP be held to those same development standards. The conditions listed below were conditions of approval for the Westridge CUP. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year and the following conditions:

1. Prior to issuing building permits, a plan for a pedestrian walk system shall be submitted and approved by the Director of Planning. This walk system shall link sidewalks along 29<sup>th</sup> Street North and 119<sup>th</sup> Street North with proposed buildings within the subject property as determined necessary by the Director of Planning.
2. Parcel 1 and 2 shall be limited to a maximum building coverage of 30 percent, per Section III.C.2.b. (2). (b). of the Unified Zoning Code. Parcel 1 and 2 shall also be limited to a maximum floor area of 30 percent.
3. The following uses shall be prohibited from all parcels in the CUP: adult entertainment establishments, group homes, group residences, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor can be developed and may serve liquor, as long as food is the primary service of the establishment.
4. The development of this property shall only be permitted if public water and sewer services are provided.
5. At the time of platting, the applicant shall guarantee off-site street improvements. These improvements are anticipated to include the construction of two lanes of roadway along 29<sup>th</sup> Street North along the property frontage and left turn lanes at the intersection 29<sup>th</sup> Street North and 119<sup>th</sup> Street West. The applicant shall guarantee 1/8 the cost of signaling the intersection of 29<sup>th</sup> Street North and 119<sup>th</sup> Street West. The applicant shall also guarantee the construction of an accel/decel lane along the entire 29<sup>th</sup> Street North and 119<sup>th</sup> Street West frontage.
6. All parcels approved for "GO" uses, shall comply with all of the City of Wichita sign code requirements for development in the "GO" district. All signs shall be spaced 150 feet apart on both parcels. Window display signs shall be limited to 25 percent of the window area. No signs shall be permitted on the rear of any building facing north or west within 200 feet of the north and west boundaries of the CUP.
7. Hotel or motel uses shall not be permitted on Parcel 1.
8. Buildings in Parcel 1 shall be limited to a height of 1 story within 200 feet of the north and west boundaries of the CUP.
9. The north 250 feet of Parcel 2 east of the reserve shall be zoned "GO" General Office and shall be limited to a building height of 1 story.
10. General Provision #1A shall be clarified that it refers to 35 foot building setbacks.
11. At the time of platting, the applicant shall guarantee the required drainage improvements.
12. Complete access control shall be provided along the first 150 feet from the intersection of 29<sup>th</sup> Street North and 119<sup>th</sup> Street West, and any openings in the first 250 feet from the intersection shall be restricted by design to right turn in-out only.
13. General Provision #9 shall be modified to require similar/consistent parking lot lighting elements, light poles limited to 24 feet in height, and a prohibition on extended use of backlit canopies and neon lighting.
14. General Provision #9B shall be modified to remove the provision for allowing further division of parcels without adjustment to the CUP.
15. General Provision #10 shall be modified to require screening of loading docks and services from *all* residential areas.
16. General Provision #11 shall be modified to require a financial guarantee for plant material approved on the landscape plan for that portion of the CUP being developed prior to the issuance of any occupancy permit, if the required landscaping has not been planted.
17. General Provision #14 shall be modified to require building exteriors to share uniform architectural character, to be predominantly earth-tone colors with vivid colors limited to incidental accent, and to use materials similar to surrounding residential areas.

18. General Provision #15 shall be modified to require the 6-foot masonry wall to be constructed with a pattern and color that is consistent with the buildings on the site.
19. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
20. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
21. Prior to publishing the resolution or ordinance establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-251) includes special conditions for development on this property.
22. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is undeveloped agricultural land located south and east of this site. Residential properties on large lots are located north and west of the site. All property in the area is currently zoned "SF-20." However, the request is consistent with the historic pattern of zoning and development inside the city and is consistent with the approved (subject to pending platting) Westridge CUP at the southeast corner of 29<sup>th</sup> Street North and 119<sup>th</sup> Street West.
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned residential and could be developed as such, once sewer and water was available to serve this property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions imposed upon the applicant, including the screening wall and the limitation on the proposed uses, should alleviate any potential impacts on the surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Suburban" development. The Comprehensive Plan recognizes that new growth will require the development of additional commercial areas to meet the convenience and shopping needs of new residents. The Land Use Guide indicates that arterial intersections like this should be expected to accommodate retail commercial development.
5. Impact of the proposed development on community facilities: This application could significantly increase the traffic on the two roads which serve this site. However, it is unlikely that this site will develop for a number of years, and through the required improvements to the roadway system this impact should be reduced.

**KNEBEL** "The applicant has requested that this item be deferred to the next meeting. I don't know if there are people here wanting to speak on this or not."

**GAROFALO** "Is there anyone here to speak on this item, 17a. and 17b. It is on the northwest corner of 119<sup>th</sup> Street West and 29<sup>th</sup> Street North. I guess there is one person. Is the applicant here?"

**KNEBEL** "Yes, the applicant is here."

**GAROFALO** "Okay. But he has asked for the deferment? Ma'am, will you come on up to the podium and state your name and address?"

**STEPHANIE LEACH** "I live right behind the Coleman, 3040 North 124<sup>th</sup> Street. I just want to know what they plan on doing with that piece of property."

**GAROFALO** "Okay, if this is deferred, then perhaps you and the applicant can get together and they can explain to you what they have in mind. Will that be okay with the applicant? Where is the applicant? Oh, Tim (Austin), okay. Could you get together with this lady? Okay, thank you. Okay, is there anyone else to speak on this item?"

**MOTION:** That the item be deferred to the January 13 meeting.

**GAROFALO** moved, **LOPEZ** seconded the motion, and it carried unanimously (13-0).

- 
18. **Case No. PUD#11** – Sedgwick County Capital Project Department, Stephanie Knebel (agent) request the creation of a Planned Unit Development on property described as:

Lot 1, Adolescent Center Addition, Wichita, Kansas; TOGETHER WITH lots 1-2, Block 10, and Reserve A, Kellogg Terrace, an addition to Wichita, Kansas. Generally located west of I-135 and south of Indianapolis and north of Morris.

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** Sedgwick County is requesting the establishment of Planned Unit Development (PUD) #11 for the purpose of expanding the County's juvenile correctional facility. The County's current facility is located south and west of Kansas Court, north of Morris Street and 100 feet east of Kansas Avenue. They would like to expand to the north and west of the existing facility, south of Indianapolis Street and east of Hydraulic. The entire site contains 9.89 acres, and is zoned "B", Multi-family Residential. Currently there are courtrooms and district attorney and probation offices, as well as residential facilities and parking on this site. In addition to the existing 33 beds and offices, they would like to add 108 beds, and additional space for programs and services. The detention facility appears to currently be a non-conforming use.

Primary access points are along Indianapolis to Kansas Court on the north and Morris to Minnesota on the south. The site plan also depicts one access point directly to Hydraulic, along the south property line. Twenty-foot building setbacks are shown along all but the southern area of the expansion area, which is showing a 25-foot setback, and a 15-foot setback along the west property line. Maximum building coverage is proposed to be 166,730 square feet, with building heights limited to a maximum of 35 feet and a total of 5 buildings. The uses proposed are: correctional facility, government service, group residence, and office and accessory utility use. The design layout is only one possible concept. The final design, including building materials and elevation design, must meet the requirements of this plan and be approved by the Director of Planning. All new building construction will employ one common material consistent with existing buildings. A 6-8 foot wall will be installed along the south line of the northern area of the site and along the west side of the site where there are properties fronting Kansas Avenue. A landscape plan consistent with the Landscape Ordinance shall be submitted for review and approval. A minimum of 220 parking spaces will be provided. Two signs consistent with the "B" Multiple-family Residential District will be permitted, except that they will be monument type signs and be limited to 16 feet in height. Exterior lighting shall be shielded and directed downward. Rooftop mechanical equipment is to be screened from ground view.

At the time of platting, drainage issues will be addressed. With approval of this PUD, parking will be allowed in the building setback along Kansas Court. Residentially zoned property prohibits parking within the building setback, unless a variance or administrative adjustment has been received. This PUD would waive the need for the variance or adjustment.

There are a variety of residential uses, including single-family, three-plex, four-plex and apartments. All uses except the apartments are zoned "B", Multi-family Residential. The apartments are zoned "LC", Limited Commercial.

**CASE HISTORY:** Adolescent Center Addition was recorded in 1973. DR 77-6 approved construction of court buildings in March 1977. BZA 3-77 approved a variance to reduce required parking from 176 to 170 spaces and to reduce the front yard setback on Morris from 20 to 5 feet for off-street parking purposes.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"B", Multi-family Residential; Three-plex, four-plex and single-family
SOUTH:	"B", Multi-family Residential and "LC", Limited Commercial; single-family residential and apartments
EAST:	"TF-3" across I-135; Interstate Highway
WEST:	"B", Multi-family Residential and "LC", Limited Commercial; single-family residential and apartments

**PUBLIC SERVICES:** Municipal sewer and water service is available. Indianapolis, Kansas Court, Minnesota and Morris are two lanes paved local streets, which permit parking on only one side of the street. Morris and Minnesota have 60 feet of right-of-way. Indianapolis and north half of Kansas Court have 50 feet of street right-of-way. Traffic counts are not available.

**CONFORMANCE TO PLANS/POLICIES:** The Comprehensive Plan contains strategies which call for the coordination and consolidation of planning, design and implementation of new and existing public safety services to maximize cost efficiency and public safety. Current detention facilities are to be monitored in order to meet future detention space needs. The Land Use Map depicts this area as appropriate for "public and institutional" uses. This category includes government employment centers or facilities. The pending update of the Comprehensive Plan includes the recommendation to "coordinate correctional programs and plan new facilities as required to meet future needs for detention and transitional housing in the County.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
- B. The development of this property shall proceed in accordance with the development plan as recommended by the Planning Commission and the City Council, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
- C. All property included within the PUD shall be platted within one year after approval of this PUD by the City Council, or the case shall be considered denied and closed. The ordinance establishing the zone change shall not be published



- until the plat has been recorded with the Register of Deeds.
- D. Prior to publishing the ordinance establishing the zone change, the applicant shall record a document with the Register of Deeds indicating that this tract (referred to as PUD-11) includes special conditions for development on this property.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding land is zoned "B", Multi-family Residential or "LC", Limited Commercial. Surrounding uses are a range of single-family, tri-plex, quad-plex and apartment residential units. Multi-family uses are located north and northwest of the application area, while single-family uses are located to the south and west. The institutional character of the area has already been established by the presence of the existing county facilities. The proposed expansion and development should be compatible in scale with the existing character of the area.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "B", Multi-family Residential. Correctional facilities are currently not permitted in the "B", Multi-family district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request should not detrimentally affect nearby property owners to any greater extent than the current facility. The proposed expansion moves the complex closer to Hydraulic, an arterial street. The proposed PUD conditions of approval include screening, landscaping, architectural control and sign controls will protect nearby properties.
4. Length of time the property has remained vacant as zoned. The expansion area is currently developed with multi-family units, which need some modernization.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan depicts this area as appropriate for public and institutional uses.
6. Impact of the proposed development on community facilities: Traffic should not increase to a substantial degree. No other adverse impacts on community facilities have been identified.

**MILLER** "At the CPO meeting, they recommended approval. There was a lady who was there who did not want to protest the actual request, but after they had taken the vote, then she expressed concerns about the traffic and indicated that at least her experience had been that it was difficult to get in and out of the residences back in this area because of the two access points that exist (indicating) there and there, primarily. She was advised that part of this would be relieved in that they plan on adding a drive along this portion here and also she was advised that she could get with her community police officer and see if it is a matter of enforcement. Maybe stepped up enforcement might relieve some of the problem down there.

There is parking permitted only on one side of the street, as I recall, on most of the streets in that area, but they are also upping the number of spaces that would be available. So that may help as well. She did specifically say that she wasn't protesting the PUD, she just wanted to express her concern about traffic in the area. With that, I would be happy to answer questions."

**MCKAY** "Dale, let's see if I understand. Moore Street, which is the street she was concerned about, that is going to carry quite a bit of traffic, is it not? And that is a pretty small street."

**MILLER** "It is paved, it is a residential-scale street. I didn't measure it."

**MCKAY** "Would we have to put like no parking on either side, or something to that effect? Has anybody calculated the traffic that is going to coming in and out of there? It's just a concern, because I think that would have to be improved if they are going to use it much at all."

**MILLER** "I am sure they would be willing to take a look at that as they go through the process."

**WARREN** "Dale, what is that area there that would be east of Hydraulic?"

**MILLER** "Right here? That is the apartment complex. There is an apartment complex there on 'LC' zoning."

**WARREN** "Are there buildings on that area now that are going to be removed?"

**MILLER** "Yes. These are mostly tri-plex and four-plex buildings up in this area that will be removed, as I understand it from the CPO hearing. They intend to remove them fairly quickly, but that the ground may sit vacant, but cleaned up, until the designs are completed and they are ready to start building."

**GAROFALO** "Are there any more questions? Okay, thank you. Is the applicant here?"

**RUSS EWY** "I am with the Baughman Company, the agent for the applicant. In attendance also, is Stephanie Knebel with the Sedgwick County Capital Projects Department, as well as Bob Lambke, the director of public safety for Sedgwick County.

Dale did a good job of going over the request for the PUD. I would also add that the lady who spoke at the CPO Monday night also expressed another concern which we also felt that the approval of this PUD would take care of. That was that the County is currently operating their juvenile intake and assessment in this building here (indicating), which is adjacent to a sports' bar and a pending liquor store development, I believe.

Part of this PUD does take that into account, extracting it from its current location and bringing it into, most likely, the new detention facility that will be located in the northern area, so we felt that we were able to address her concern as it relates to the location of the Juvenile Intake Center. As Dale mentioned, she did have concern, as did other people in the neighborhood when we met with them on August 26, that there are days that Morris Street, Kansas Court and Indianapolis Street can get relatively congested with traffic, as well as the on-street parking, and we felt that we are increasing the parking by a relatively substantial percentage, as well as providing an alternative access route onto an arterial, thereby accounting for at least the minimal traffic increase that this new development will create. So we felt pretty confident that we were addressing her concerns.

Do you have a copy of our site plan in the slides? At the back? Okay. As I mentioned, we did hold an informational meeting at the Juvenile Detention Center on August 26. It was well attended, and the meeting went relatively well with the surrounding property owners. They were encouraged by the fact that we were looking to redevelop a portion of the area. (Indicating) This is where the 108 new beds will be located, as the slide indicates, that is developed with approximately 12 tri-plex or quad-plex units. The phasing for this development, as part of this PUD approval would be the acquisition or the closing on the property sometime early next year with the demolition and removal of those structures happening sometime in mid to late spring.

Construction probably will not occur for at least another year on the site. This new construction that is proposed as well as some slight modifications and expansions of the District Attorneys' offices and the court services building here. I would be more than happy to answer any questions that you may have."

**GAROFALO** "I have a question. This screening that you indicate here. What is it going to be?"

**EWY** "The screen, per the Zoning Code. Currently the majority of the properties, and these are single-family homes off of this cul-de-sac here, with the apartment complex being located in this area, and the apartment complex currently has a 6-foot high wood fence for its own development, and the majority of these homes also have a screening fence of some sort. They all have fencing. I believe there is one or two that have chain link, the others have wood fencing. We felt, obviously, that you can't rely on the adjacent property owners' screening to provide your Code requirements, so we will be providing screening per Code along our southern and western boundary here.

If you have been out to this site, there is a substantial amount of mature trees and vegetation along here. We are wishing to keep this area here as open as possible."

**GAROFALO** "Is there nothing along Indianapolis Street on the north?"

**EWY** "No, sir. Again, we did an architectural survey of the property, locating the number and location of trees over a certain caliber and we are giving that information to the architects and hopefully they will be able to incorporate as many of those trees as possible into the final development plan."

**GAROFALO** "Are there another questions? Is there anyone else to speak on this application? Do you want to speak in favor or against it? Okay. Is there anyone else to speak in favor? Okay, Ma'am."

**DAYLA WILLIAMS** "I live at 1142 South Kansas. I live south of the juvenile center. A lot of the pictures, I noticed were of duplexes and four-plexes. I live in the Max Steinvocal area. It is a very unique area of brick homes. The paving bricks came from old Douglas Street. They are very nice, unique homes. I am concerned about the aesthetics of the new area, and of the security. This is a juvenile correctional facility. I don't see guards or fences. I understand that it also has a court and other facilities.

Also Morris Street is terrible, it gets blocked up. You can't go down the street if you are turning from Hydraulic. There is parking and maybe there is half a block where there is no parking on the south side, otherwise people can park there. So often you have to wait behind parked cars for the other traffic to come out and get onto Hydraulic and then you can get out. It is a really congested area, especially in the evenings and early morning.

I am concerned about the increase in more violent juvenile offenders, and what security are they going to offer us? Is this a quick fix? Do we possibly need to look somewhere else to build a facility to hold even more? I know this is 33 beds, but I am just curious as to how many we actually have room for now. I realize that we are probably over our 33 beds and there are probably cots there. What can be done to protect my family is mostly what I am concerned about. There is really not room for the traffic flow. It is going to be a real problem, I think.

I am concerned also for the property value of my home. Our home has been in our family for a while and I just hate to see this. This is a unique area. They have shown you a lot of pictures to the north, all of those complexes, and then on the other side of Hydraulic, but there are some really nice homes down around Linwood Park. Also, over the last few years, I believe that there has been an increase, as quoted by the Wichita Eagle, of crime rates in that area. Our community is trying to keep that down. I am just concerned that if you have a facility by Lincoln and I-135, it might be tempting for people to escape or riot to get out and hop over, get on the Canal Route and fly off. I would just like for everyone to take a moment to kind of look at that, the security, and what security can be offered to the people in that area."

**GAROFALO** "Ma'am, could you go over and point out where you live?"

**WILLIAMS** (Indicating) "Well, we live right here. Actually, in this whole area, all of these houses here are double stone. They are not just a fascia of brick. They are actually stone with cathedral ceilings. Our last property value estimate that we got was \$58,000. These are owned by older people and like I say, this is just a booger getting off Morris and Hydraulic. It is a mess."

**GAROFALO** "Thank you, Ma'am. I just wanted to know where you lived, exactly. Are there any other questions?"

**WILLIAMS** "Would you like to see a picture of the home? He kind of showed a picture of our home. If you can see, the bricks are made from the old Douglas Street. They are simply homes, but they are unique."

**GAROFALO** "Thank you. Are there any other questions of the speaker?"

**BARFIELD** "I just want to ask you how long you have lived at this address?"

**WILLIAMS** "We have lived there for nine years. My husband's grandmother owned it for 40 years."

**BARFIELD** "And in that period of time, have you had any problems with security from this facility?"

**WILLIAMS** "No, we haven't."

**GAROFALO** "Okay, thank you. Is there anyone else to speak on this item? Okay, then the applicant will have two minutes for rebuttal."

**EWY** "Some of her concerns dealing with safety of the complex itself and some of the operational questions, Ms. Knebel will be able to address. I just wanted to say that the focus of the expansion is obviously to the north along Indianapolis. The contract seller also owns properties further to the north of the proposed expansion."

I believe the people who were in attendance, again, the 30 or 40 people that attended our informational meeting were very agreeable to this. We are not concerned, necessarily about the safety factor as much as some of the traffic factors. I will reiterate that we believe that elements of our development plan will address traffic, focusing it from our complex directly onto Hydraulic, trying to minimize or at least not to increase the traffic that is found on Indianapolis, Kansas Court, Minnesota and Morris Streets. I will step aside and let Stephanie address her other concerns."

**BARFIELD** "I can foresee some major traffic problems there. Let me just ask you for clarification, Kansas Court, Minneapolis and Minnesota. Don't those all end in a cul-de-sac?"

**EWY** "Those actually all loop around and come back to Hydraulic. I believe Minnesota continues south until you get closer to Lincoln and then loops around Lincoln and then back up to Morris. Kansas Avenue does end in a cul-de-sac, which is the street right to the west of us. Indianapolis, there again, goes up further to the north and ends."

**BARFIELD** "Would you say that Morris is the main access street coming into this though?"

**EWY** "Currently, the Juvenile Detention Facility, if you have been down there and seen it, that is the main entrance to the center itself. That is where its signage is, that is where its main lobby is. Therefore, the focus, currently, is for people to access that facility via Morris Street."

**BARFIELD** "So what is involved in your plan to alleviate that situation? I see that getting worse, not better."

**EWY** "For one thing, we would argue very much the fact that although we expanding this facility, not too many detainees will be driving to the site. Therefore, it is a use similar to a self-storage use that you have a large amount of construction occurring, but it is construction that doesn't generate traffic. I think that is the important difference. The use that we are engaged in here is a use, that although we are expanding the buildings, we are not necessarily increasing, by a drastic amount staffing. We aren't, again, going to be generating an appreciable amount of traffic than what is being experienced here today."

Of the traffic that we would be generating that is in excess of today's traffic, we believe we are bringing it off of the public streets into our expanded parking facilities, and we would also be providing it one more direct access onto the arterial versus the local streets in the area."

**BARFIELD** "Now, you have 33 beds and you are expanding to over 100, is that correct?"

**EWY** "Exactly."

**BARFIELD** "So therefore, if you have 33 detainees and you are going to over 100, you will have the families of over 100 people visiting that facility."

**EWY** "I would defer that to Stephanie as far as what visitation is like. It is my understanding that you don't see an incredible amount of visitation traffic. I know that the staffing for the new structure will be limited to approximately 12 staff people. So there again, I think the development, as proposed, would be able to handle that increase."

**GAROFALO** "Okay, we will hear from Stephanie then, to address the security and whatever issues."

**STEPHANIE KNEBEL** "I am from the Sedgwick County Capital Projects Department."

**GAROFALO** "Could you address the concern about security?"

**KNEBEL** "If you have been down there and you have noticed the way the police officers bring clients in and out of the facility, you would know that basically all we are looking at is a drive-way and the police officers are taking kids out of the car and just walking them up, in the open, up into the facility."

What we have been talking about is more of a sally port consideration, where the police cars and other cars would drive into an enclosed sally port, so both ends of the sally port would be closed. Then the police would walk the kids into the building. There would be no chance of escape, or it would be reduced substantially. The way it is operating now is the most dangerous way possible, even though the police officers have the kids with them; they are still out in the open. In the new facility, we are looking at a different way to bring people into and out of the facility."

**GAROFALO** "Okay. Could you now address the issue of traffic?"

**KNEBEL** "Traffic along Morris Street?"

**GAROFALO** "Where does all of this parking come from on Morris Street that people are talking about?"

**KNEBEL** "Right now, Morris is a public street and it has public parking right-of-way, so I know people are using that street for parking. We know that there is a problem down there with not enough parking lot space being available. The PUD application indicates that we would have a minimum of 220 parking spots. Right now, there are 170 and 173 down there. So we are increasing them."

Also, the PUD indicates that it would be a minimum of 220 spaces. As we go through some more design and detail work, we are going to try to put as much parking in there as we can."

**GAROFALO** "Besides staff using the parking, who else uses it?"

**KNEBEL** "I am not extremely familiar with the operations of the detention facility. It would be my guess that the same type of people that use it now would continue to use it in the future. They probably have attorneys that come to speak with their clients. There are probably some social caseworkers that come down there also."

**GAROFALO** "Okay, thank you. Are there any other questions? Okay. We will bring it back to the Commission."

**MCKAY** "This is a question for staff. Have we checked the overall parking requirements by City Code in reference to the number of people who are going to be there?"

**KROUT** "It is kind of a unique use, but Dale, didn't you do something like that?"

**MILLER** "Yes. At this point, until we actually get the footprint, we don't really know exactly what they have, but what they are doing now exceeds, at least what we know. Once we know what they are actually doing, we will know more what to expect."

**MCKAY** "Will that be a condition when they go to get the building permit to do whatever they are going to do?"

**MILLER** "Yes. Marvin has to sign off on the site plan."

**MCKAY** "Okay, thank you."

**GAROFALO** "Are there any other questions? Okay, what is the pleasure of the board?"

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Surrounding land is zoned "B", Multi-family Residential or "LC", Limited Commercial. Surrounding uses are a range of single-family, tri-plex, quad-plex and apartment residential units. Multi-family uses are located north and northwest of the application area, while single-family uses are located to the south and west. The institutional character of the area has already been established by the presence of the existing county facilities. The proposed expansion and development should be compatible in scale with the existing character of the area. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "B", Multi-family Residential. Correctional facilities are currently not permitted in the "B", Multi-family district. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request should not detrimentally affect nearby property owners to any greater extent than the current facility. The proposed expansion moves the complex closer to Hydraulic, an arterial street. The proposed PUD conditions of approval include screening, landscaping, architectural control

and sign controls will protect nearby properties. Length of time the property has remained vacant as zoned. The expansion area is currently developed with multi-family units, which need some modernization. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan depicts this area as appropriate for public and institutional uses. Impact of the proposed development on community facilities: Traffic should not increase to a substantial degree. No other adverse impacts on community facilities have been identified.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

**GAROFALO** moved, **MARNELL**, and it carried unanimously (14-0).

-----  
**19a. Case No. Z-3349** – Albert H. Gibson and C.C. Lawson, applicant; Don Folger, agent, request zone change from "NR" Neighborhood Retail to "LC" Limited Commercial; and

**19b. Case No. CU-551** – Albert H. Gibson and C.C. Lawson, applicant; Don Folger, agent request a Conditional Use to permit a car wash on property described as:

Odd Lots 1-11 inclusive, Block P; and Lots 43, 45 and 47, Block 1, lying south of Orient Boulevard, except west 10 feet for street, and 1/2 vacated Dora Street on south, south University Place Addition, Wichita, Sedgwick County, Kansas. Generally located east of Meridian and south of Orient Boulevard.

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a Conditional Use permit to allow a car wash to be located within 200 feet of residential zoning. The applicant is also seeking a zone change from "NR", Neighborhood Retail to "LC", Limited Commercial. A car wash is first permitted in the "LC" district with a Conditional Use. The application area is a one-acre platted tract of land located at the southeast corner of Meridian and Orient.

The attached site plan shows a seven-bay car wash. All seven of the car wash bays are depicted as self-service. These wash bays are located approximately 48 feet west of the east property line. The plan also depicts four vacuums located east of the wash bays, on the eastern property line. Fourteen parking spaces are also shown along the east property line. These parking spaces are to be used for drying or vacuuming. The facility would have one access to Orient, located 120 feet east of the intersection of Orient and Meridian; and one to Meridian, located 60 feet south of the intersection of Orient and Meridian.

The site plan indicates that the southern most 125 feet of the application area will not be used by the car wash. No use has been identified for this vacant strip at this point in time. The applicant had to buy the whole parcel and the code requires the 60-foot separation distance from residential zoning used for permitted uses. Single-family homes are located south and southeast of the applicant's ownership. To the east is located an Eagles Lodge, a baseball diamond and vacant land. Railroad tracks are located north of the site.

Key Unified Zoning Code car wash "supplementary use requirements" include: buildings to be located at least 35 feet from arterials and 20 feet from other street right-of-way; 60 from the lot line of any residentially zoned lot, unless the property is being used for a nonresidential use permitted by-right in the underlying district; fencing, a minimum of six feet in height shall be provided along the interior side and rear property line, when adjacent to a dwelling; all area utilized for washing or drying, including ingress and egress, shall be paved; lighting shall comply with lighting standards in the code; no string-type lighting shall be permitted and signage as per the sign code.

Compatibility setbacks are required along side and rear lot lines adjacent to property zoned TF-3 or more restrictive. The minimum setback is 15 feet plus one foot for each five feet of lot width over 50 feet, up to a maximum of 25 feet.

Landscaping will be required per the "landscape ordinance".

The project complies with compatibility setback and supplemental requirements. A screening fence will have to be built along the perimeter where the "LC" zoning is adjacent to residential zoning, part of the east and the south property lines; and landscaping will have to be provided.

**CASE HISTORY:** In January 1999 this site was approved for "NR", Neighborhood Retail zoning, subject to re-platting within one year. To-date the site has not been re-platted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "MF-29", Multi-family Residential; Orient Blvd. and railroad right-of-way

SOUTH: "MF-29", Multi-family Residential; single-family residential

EAST: "TF-3", Two-family Residential, and "LC", Limited Commercial; Eagles Lodge, ball diamond, vacant and single-family homes

WEST: "LI", Limited Industrial; feed and seed warehouse, warehousing and manufacturing

**PUBLIC SERVICES:** The site has frontage to Meridian, a four-lane arterial and Orient Blvd., a local two-lane street. Meridian has traffic volumes of 17,000, while Orient has volumes of 1,300 cars per day. The 2030 Transportation Plan estimates the volume for Meridian will increase to 19,000. 2030 projections are not available for Orient. Municipal services are available to serve this site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide identifies this area as appropriate for high density residential uses. This designation has not been changed since the zone case that rezoned the property to "NR". This category includes densities in excess of 10 units per acre, such as garden apartments, condominiums and special residential accommodations for the elderly. The commercial locational guidelines recommend that residential uses should be buffered from commercial uses.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
- B. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
- C. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- D. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding land is zoned for a wide variety of uses – Limited Industrial, Limited Commercial, Two-family and Multi-family. There are industrial and warehouse uses, a fraternal organization, ball diamond, vacant land and single-family residential uses surrounding the site. This area is a mixed-use area.
2. The suitability of the subject property for the uses to which it has been restricted. The site is approved for "NR", Neighborhood Retail. This district permits very low intensity office and retail uses. The site could be developed with such uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, fencing and landscaping requirements.
4. Length of time the property has remained vacant as zoned. The property is currently vacant as zoned.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide identifies this area as appropriate for high density residential uses, however this is an outdated designation due to the 1999 zone change which approved this site for "NR" uses. The Plan recommends that auto-related uses should be confined to area where similar uses already exist. However, car washes have traditionally been located along collector streets, and this site is, for the most part, adjacent to more intensive uses and zoning.
6. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would have been generated with the "NR" zoning. Other community facilities should not be adversely impacted.

**MCKAY** "Mr. Chair, I have a conflict of interest. The agent is my nephew, who is in my office. I will step down."

**MILLER** "CPO 4 will meet on December 23. If there are any questions, I will be happy to answer them."

**GAROFALO** "Let me ask you this, in January, what was the original request for? The previous one."

**MILLER** "On that one, I think they asked for 'LC'."

**GAROFALO** "And staff recommended 'NR'."

**MILLER** "Yes."

**GAROFALO** "What would change anything now?"

**MILLER** "Well, at that time, they did not have a specific use, it was just a speculative request, so we were a little uneasy about granting 'LC' without knowing for sure what might be there. But with this, now that we have some idea of what the actual intention is, we can."

**GAROFALO** "That answers my question. Are there any other questions?"

**WARREN** "That ball diamond, is that public or does it belong to the Eagle's Lodge?"

**MILLER** "I am assuming that it belongs to the Lodge, but you know what happens when you assume."

**MICHAELIS** "Where is the ball diamond, just directly east of there?"

**MILLER** "Yes, just right in there."

**KROUT** "Can we get the aerial back?"

**MILLER** (Indicating) "There is the lodge and there is the ball diamond."

**MICHAELIS** "Okay, and right below that is the 'TF-3', correct?"

**MILLER** "Yes."

**WARREN** "And it is undeveloped?"

**MILLER** "There is a vacant chunk and then right in here is where the homes start."

**MICHAELIS** "Is that where it is coming within the 100 feet or so where it has to have a Conditional Use ..to residential? Is that what is causing that?"

**MILLER** "I am not sure I understand what you are asking."

**MICHAELIS** "I was wondering why the Conditional Use, but the way I read it, there is a distance there where."

**WARNER** "Isn't there a no-left turn when you get south of the railroad track onto Orient? Because you can't see over the hump and they have had some rear-enders."

**MILLER** "I don't know. I came down Orient and did this and then squirreled around."

**MARNELL** "They have recently replaced that track."

**WARNER** "So that is no longer the case."

**HENTZEN** "Is that white building, just to the left there, is that that feed and seed company?"

**MILLER** "Yes. Valley Feed and Seed I believe."

**PLATT** "Why didn't staff put some kind of description on the south 125 feet of this site that borders on the residential to the south?"

**MILLER** "I am not sure whether or not we thought it was totally appropriate at this point without knowing for sure what it is."

**PLATT** "The way you have it, it will be 'LC' right up against this."

**KROUT** "I guess our feeling was that we still have the car wash from the lot to the south, what's left of this land is probably not enough to do a major intensive fast-food type use. And they will have to provide screening and landscaping materials along that south property line."

**PLATT** "But the car wash doesn't have to be built along there. It is now an known 'LC' zoning."

**KROUT** "That is right. It is zoned 'LC'."

**MILLER** "For what it is worth, the applicant is someone who has done other car washes, so we do have somewhat of a track record with him, so to speak. For whatever that is worth."

**GAROFALO** "Okay. We will hear from the applicant."

**DON FOLGER** "I am the agent for the applicant. We are in agreement with all of the staff comments."

A couple of items. That 100 feet to the south that was left was done on purpose. The piece of land, first of all, we had to buy all of it or none of it. So there was some left. So, putting the car wash to the north end of the property is the best way to do that. The owners that are going to buy that have no intention of developing that right now, and would be willing, if it would be your desire, to buffer that with 'NR' for the last 100 feet also; do 'LC' on the car wash lot and 'NR' on the last 100 foot, leaving it like it is. 'LC' would be better, I think it would be more marketable, but they don't have a problem with doing that. Other than that, those are the only comments we have. We are in total agreement with staff comments."

**GAROFALO** "Are there any questions of the applicant's agent? Thank you. Is there anyone else here to speak in favor of this application? Is there anyone here to speak in opposition?"

**DAVID HOLMES** "I am an attorney here in town. My business address is 300 West Douglas Suite 430. I represent Sonny and Marie Bosley, who are the owners of the single-family residential property directly to the south. Mr. Bosley is present here as well.

We are in opposition to this change. The first point, as Dale pointed out was last January, this same property was before this Commission to be changed from 'MF-29' to 'NR'. That was granted, conditioned upon having a replatting within one year. That year expires, as I understand it, at the end of this calendar period. So there are some 14 days in which to file that platting and have the 'NR' go into effect. If that platting is not filed, as I understand it, this will revert back to 'MF-29'. So our first problem with this is that first it is somewhat of a misnomer to say that this is already 'NR'. It is really 'MF-29' with conditional approval to go to 'NR'. We think to go from an 'MF-29' to an 'LC' is inappropriate for this area.

(Indicating) As the aerial indicates, this is Orient running along the railroad track, and this is Meridian. From this intersection of Orient and Meridian, it is true that the railroad track has recently been rebuilt, and if you remember, prior to that rebuilding, there was about a 6 foot rise or drop, really from the railroad track, going south to Meridian. That drop now is only about 3 to 4 feet. It still presents somewhat of a problem. There is not a restriction of turning left onto Orient, and that presents, we believe, a traffic hazard pattern of travelling south on Meridian, forcing the left-turn and backing up traffic over the railroad track.

In addition, with Valley Feed and Seed's driveway being right here, it presents an additional traffic impairment. The proposed usage would have a driveway in approximately this location (indicating), and then on Orient. We are additionally concerned that as the railroad tracks block Meridian, which happens 2-3 times per day for various periods of time, the traffic pattern frequently goes from traffic travelling north on Meridian along Orient all the way to Seneca. We believe that that traffic pattern and particularly the use of the car lot with a driveway here and a driveway there will only enhance an illegal purpose or use of the car wash to get around a blocked intersection.

As I indicated, Mr. Bosley is located here (indicating). It is a single-family residential home. There are two other single-family residential homes to the south of that, and I believe there are 6 or 7 single-family homes along the backside of this property on what is May Street. The ball diamond is a private diamond. It is owned by the Eagle's Lodge. The only zoning, if we go back to the zoning map, that is not residential is the Eagle's Lodge. If you will notice, everything in this whole quadrant, in fact from here all the way down to Pawnee, approximately 8 blocks, this whole area is residential. On the other side of Meridian, the whole area is commercial and industrial. In fact, there are four or five parcels of property currently offered on the market, which are zoned for industrial or light commercial usage where a car lot could be placed, again along an arterial and not jeopardize the business venture of Mr. Larson.

We are in opposition to this, due to the recent change from Multi-Family to 'NR' and then further restricting it. We believe that it is imprudent to provide for a 'LC' zoning and then put a 'CU' on top of it. If you need something than a 'LC', you shouldn't have to overlay a 'CU' with it, just go ahead and zone the whole thing and call it what it is. We believe it is inappropriate to layer this with a 'CU'. We believe the traffic patterns are a problem and we believe it will be detrimental to the value of the property. I would be happy to entertain any questions."

**WARNER** "Are you saying that your client would rather have a car wash across the street from them?"

**HOLMES** "Not really. We would prefer that the eight blocks going south where there is commercial property for him to move it closer to the intersection of Pawnee. But, I think it is very clear that just across the street there is empty footage, there is frontage onto Meridian that could be utilized for this with appropriate zoning, and we don't think it is appropriate to encroach into the residential section across the street to put in something that could be placed relatively close."

**JOHNSON** "I don't know if you heard what the agent for the applicant had to say about possibly the south 100 feet being 'NR'. How do you think your client would react to that?"

**HOLMES** "We would rather have the whole piece of pie, but if we only get half of it, that would be better than none."

**BARFIELD** "Has there been any conversation between your client and the applicant?"

**HOLMES** "There have been. Approximately 10 days ago, the applicant approached my client about my client purchasing the property. Also, there was talk with my client about wanting to build an automobile body shop on that parcel of property since my client's occupation is a body shop repairman. There were lots of promotional comments, shall we call them, made, kind of a sales job done, no substance occurred as a result of that, no proposals have been put forth, no follow-ups occurred. There were two conversations, and it was, to say the least, a sales job."

**GAROFALO** "Any other questions? Thank you. Is there anyone else to speak on this case? The applicant's agent has two minutes for rebuttal."

**FOLGER** "In terms of the comments that were presented, I was made aware of the discussions of the applicant and the homeowner to the south. My understanding was that they were negotiating things but nothing was determined on what could be done as a permanent stature. He did not make a comment on whether they would ever come to selling the land, and that wasn't the issue. The issue, from the applicant's standpoint was that the car wash would be there and there would always be a gap between the two. I am telling you this as hearsay; it is just what my applicant said."



Back to the terms of the zoning, and the traffic. I believe the Traffic Engineering Department has determined that that traffic of turning there on Orient and reducing the railroad tracks, by doing what they have done there and not putting a 'no turn', because I know there used to be one there, they are saying that there is access to turn there and that there isn't going to be a problem with accidents. So we feel that putting in an approach where we have put it into this facility works fine. It is also why we are doing the access out to the side so that they do have the chance to go down on to Seneca and disperse back into the neighborhood.

Also, the zoning to do this, and most car washes I have done, and I have done quite a few, almost all of them are in 'LC' with a Conditional Use. That is a standard way of putting a car wash in. Very seldom do you find a neighborhood that needs a car wash that is commercial zoning where you don't need a Conditional Use. This is standard. Are there any other questions?"

**GAROFALO** "Are there any other questions of the applicant's agent? Okay, thank you. We will take it back to the Commission since there are no other speakers."

**BARFIELD** "The attorney brought up an issue that the zoning that has been stated is not correct. Could somebody from the staff address that?"

**MILLER** "The zoning is correct on the map. It is shown as 'MF-29'. They are approved for 'NR', subject to platting and they do have until the end of the year to file that plat. If this were to be approved, then the 'NR' would go away and it wouldn't be subject to platting so the zoning would change as soon as we published the Ordinance."

**JOHNSON** "Since they offered the possibility of the south 100 feet....but this is all one parcel, right?"

**KROUT** "I think you can rezone the 'LC' and Conditional Use for the carwash for everything except the 100 feet. I think then you would maybe reiterate 'NR' zoning. You could recommend a lesser zoning than the zoning that is requested, so you can recommend 'NR' zoning for the south 100 feet. That is the zoning that was previously approved, subject to platting."

**JOHNSON** "I want to make a motion then, but I also heard that the neighbor to the south is wanting to negotiate to possibly build a body shop, so he will be back in front of us to get 'LC' zoning, right?"

**KROUT** "He will be back to get General Commercial zoning because even 'LC' zoning doesn't fit a body shop."

**JOHNSON** "Yeah, that is right."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Surrounding land is zoned for a wide variety of uses – Limited Industrial, Limited Commercial, Two-family and Multi-family. There are industrial and warehouse uses, a fraternal organization, ball diamond, vacant land and single-family residential uses surrounding the site. This area is a mixed-use area. The suitability of the subject property for the uses to which it has been restricted. The site is approved for "NR", Neighborhood Retail. This district permits very low intensity office and retail uses. The site could be developed with such uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, fencing and landscaping requirements. Length of time the property has remained vacant as zoned. The property is currently vacant as zoned. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide identifies this area as appropriate for high density residential uses, however this is an outdated designation due to the 1999 zone change which approved this site for "NR" uses. The Plan recommends that auto-related uses should be confined to area where similar uses already exist. However, car washes have traditionally been located along collector streets, and this site is, for the most part, adjacent to more intensive uses and zoning. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would have been generated with the "NR" zoning. Other community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. Z-3349 – Approve the zone change to "LC" Limited Commercial EXCEPT for the south 100 feet, which will remain approved for "NR" Neighborhood Retail, subject to platting.
- B. CU-551 – Approve the Conditional Use to permit a car wash, subject to the following conditions:
  1. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
  2. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
  3. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.

4. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

**JOHNSON** moved, **MICHAELIS** seconded the motion.

**PLATT** "If we do that and it isn't replatted, then the south 100 feet will revert back to 'MF-29'. Is that what your intent is?"

**JOHNSON** "Well, I guess if it is not platted, it will."

**WARREN** "Could we extend that so that he give us a plat, which would include what we have done today?"

**KROUT** "Staff looked at this and decided that in this particular case, there was not going to be a need for it to be replatted. We are giving access control. Dale did indicate that we want to be able to obtain any additional right-of-way easements that are determined necessary by Subdivision."

**WARREN** "What should we do to effect his motion to 'NR' then?"

**KROUT** "Well, I think if you approve 'NR' on the south 100 feet, then the zoning request that goes to the City Council will be 'LC' and 'NR' on the south 100 feet. The applicant has a choice here between now and the end of the year of either letting their first application go, but then there would still be an application in front of the City Council in January for 'LC' zoning and 'NR' zoning so they could approve it.

If he wanted to keep his options open, he could file a request for an extension and we could administratively extend the platting time by the MAPC policy for 1 year initially from the original platting time that was required by the City Council."

**MICHAELIS** "Just for clarification, Marvin, even if this does go back to 'MF-29', essentially we are making a motion to say that we are going to approve 'LC' plus 'NR', so really it is irrelevant, isn't it?"

**KROUT** "Yes, that is right. If your request for 'LC' and 'NR' without the requirement for platting will go in front of the City Council in January, and if the City council approves it, then whatever happens to that previous zoning request, they will be approving 'LC' and 'NR'."

**MICHAELIS** "Right. Okay, that clarifies it for me."

**VOTE ON THE MOTION:** The motion carried with 11 votes in favor. Barfield opposed, McKay abstained. Osborne-Howes was not present.

20. **Case No. CU-555** – Bahram Panahi (owner/applicant); Austin Miller P.A., c/o Tim Austin (Agent) request a Conditional Use to allow a personal care service on property described as:

The east 62 feet of Lot 4, Jim Fisher Addition to Wichita, Sedgwick County, Kansas. Generally located west of Woodlawn on the south side of Central (6019 East Central).

**GAROFALO** "Is there anyone here to speak on this Conditional Use, which is to allow personal care service, a tailor shop?"

**KROUT** "Let's go ahead and take it and just have a brief presentation."

**LISA VERTS**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a Conditional Use to allow a personal care service on 0.2± acres of platted property zoned "GO" General Office in the Jim Fisher Addition located west of Woodlawn on the south side of Central. The request is being made to allow the applicant to open a tailor and alteration shop at this location. Currently, this site is a single-family residence, but will be converted to allow the intended use. Personal care services are allowed as a permitted use in the "NR" Neighborhood Retail district, but require a Conditional Use permit in the "GO" district.

The surrounding uses are mixed in nature. There are duplex residential units to the south and single-family homes to the west. To the east is a converted single-family residence that is being used as a beauty salon with parking in the rear of the building. Across Central Avenue is a variety of commercial, retail, and restaurant uses.

The applicant submitted a site plan that shows the re-use of the existing home as the tailor/alteration shop. The applicant proposes to accommodate parking in front of the existing structure, using the existing garage as one space. The square footage of the structure necessitates five parking spaces, one of which shall be handicap accessible. The site plan submitted shows four spaces, in addition to the existing garage. Traffic Engineering has noted that two of these spaces would be unacceptable as off-street parking, primarily, because the amount of room to back out and turn around is limited. They also note that none of the spaces are handicap accessible. Staff recommends that parking be located on the rear of the lot, behind the structure with a sub-standard temporary driveway access along the west property line. The driveway to this lot would be temporary, until such time that the property to the west is re-developed. At this time, as per the plat and accepted access

management practices, access would be shared between the two, and potentially three lots, with parking and cross-lot access at the rear of all structures.

**CASE HISTORY:** This history is intended to provide an idea of how the property owners and the Planning Commission planned for redevelopment on the south side of Central Avenue when the property was rezoned and replatted in 1987 and 1988, and a portion subsequently rezoned in 1996.

The lots south of Central Avenue between Brookside Parkway and Hillcrest Avenue were rezoned to "GO" General Office on December 8, 1987. This rezone approval was subject to re-platting, with the direction that the plat should address the location of housing, existing and proposed driveway locations, proposed parking areas, setbacks, and the grouping of lots, with joint use of access and circulation to rear lots to be encouraged. The zone change was also subject to a restrictive covenant that prohibited any of these lots from being combined or utilized in any way with the residentially zoned property to the south and fronting on Oakwood Drive. The restriction was intended to prohibit any conditional use for off-street parking on any lots that front Oakwood Drive by owners of the lots along Central Avenue.

The area was re-platted as Jim Fisher Addition on July 28, 1988. The plat combined several of the lots from the older plat (Oakwood Estates 2<sup>nd</sup> Addition) into a 5-lot plat, with each lot limited to one access opening to Central Avenue. This application is for a Conditional Use on a portion of one of those 5 lots. The consolidation of the existing access drives was to occur incrementally as the lots redeveloped.

On January 9, 1996, the Wichita City Council approved rezoning for the west portion of Lot 5, Jim Fisher Addition to "NR" Neighborhood Retail for use as a beauty salon (directly east of this application). This rezone was subject to a restrictive covenant being placed on the property that restricted the use to those allowed in the "GO" General Office district and a hair stylist salon. Additionally, this restrictive covenant stated that when the remaining portions of Lot 5 were redeveloped, the subject property shall provide joint access from a paved rear parking area, south of the structure. At such time parking shall be removed from the front of the structure and replaced with landscaping. Item 3 of the restrictive covenant states that "the subject property shall provide access to Lot 4, Jim Fisher Addition, along the west property line (property associated with this application) for circulation between the rear parking areas."

#### **ADJACENT ZONING AND LAND USE:**

NORTH: "LC" – "Hometown Buffet" and other commercial, retail, and office uses  
SOUTH: "TF-3" – Duplex housing  
EAST: "NR" – Beauty shop  
WEST: "GO" – Single-Family Home

**PUBLIC SERVICES:** Public services are available to this site. Access to this site is from Central Avenue, a designated arterial. Central Avenue has recorded 1997 traffic volumes of 23,000 average daily trips (ADTs) west of Woodlawn with projected ADTs of 29,000 by 2030. There are expansion plans for Central and Woodlawn Avenues to make them 5-lane arterials.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use map of the Comprehensive Plan identifies this area as being appropriate for a mixture of office and medium-density residential uses. Although a tailor and alteration shop is considered more retail in nature by the Unified Zoning Code, this use is permitted in the General Office zoning district as a Conditional Use where the location and circumstances are appropriate.

**RECOMMENDATION:** Based on information available prior to public hearings, planning staff recommends that the request for a Conditional Use be APPROVED, subject to the following conditions:

1. The applicant shall obtain all applicable permits, including but not limited to: building, health, and zoning.
2. The applicant shall provide parking south of the existing structure in the rear yard with access to the parking area along the west property line. This access off of Central Avenue and the sub-standard driveway shall be temporary, until such time as properties within Lot 4, Jim Fisher Addition, are redeveloped for other than residential uses.
3. The applicant shall submit a revised site plan, which shows parking south of the existing structure, for approval by the Planning Director. This site plan shall provide for a minimum of five parking spaces, one of which shall be handicap accessible.
4. The applicant shall submit a restrictive covenant to include the following restrictions:
  - A. At which time the remaining portion(s) of Lot 4, Jim Fisher Addition are redeveloped, the subject property shall: 1) provide joint access along the west property line to rear lot parking with cross-lot access; 2) remove the temporary access from Central Avenue; and 3) share in the construction of a standard two-lane driveway to parking in the rear of the subject property and the remaining properties of Lot 4, Jim Fisher Addition.

- B. The subject property shall provide access to Lot 5, Jim Fisher Addition, along the east property line for circulation between the rear parking areas, unless the city engineer determines that grading considerations make this impractical.
5. Any violation of these conditions shall render this Conditional Use permit null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The south side of Central is characterized by a mixture of residential uses, home occupations, and office uses as permitted in the "GO" General Office district, with some specific use exceptions. The requested Condition Use for a personal care service would be consistent with the zoning surrounding the subject property in three directions.
2. Suitability of the subject property for the uses to which it has already been restricted: The subject property could be developed with uses as stipulated by the "GO" General Office District. The Unified Zoning Code allows for additional uses through the application of a Conditional Use permit, provided the applicant and site meet the review criteria as stipulated by said Code.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: This area is transitional in nature, with a general use shift from residential to office and service uses. With the provision of parking being located at the rear of the property and appropriate screening from the residential property, the approval of this Conditional Use permit should not have significant impact on the surrounding property owners or the safety of traffic along Central Avenue.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The zoning code anticipated this type of use and makes specific provision for it. Approval of this request will not be contrary to any Comprehensive Plan policies or guidelines.
5. Impact of the proposed development on community facilities: None Identified, provided the parking area is placed at the rear of the subject property, south of the existing structure.

**VERTS** "This is currently a house, and they are living in that house. The applicant wants to put a tailor and alterations shop in that house. This whole section between Brookside Parkway and Hillcrest Avenue has all been rezoned 'GO' General Office. In 1988, this was also replatted as the Jim Fisher Addition.

The applicant has submitted a site plan and staff has requested some changes to this site plan. The applicant originally requested parking in the front; instead, staff is recommending parking in the rear. It is my understanding that the agent and applicant are in agreement with this. We also suggested a temporary drive-way along the west portion of the lot. In recent conversation with the agent, this site plan is incorrect and there is actually only about 6 feet of property on this side. Instead, we would request that the temporary access to the driving area be on the east side, at such time when the lots to the west are developed. This temporary access would be removed and a joint access on the west side of the lot would be constructed in conjunction to any development to the west. We are recommending a Restrictive Covenant, speaking to those issues. As part of that Restrictive Covenant also, we are suggesting access to this lot here (indicating).

The lot to the west has been rezoned to 'NR' Neighborhood Retail. There is currently a beauty shop on that lot with a parking configuration similar to what we are suggesting for this lot. They also have a Restrictive Covenant on that lot, which will provide access to this lot to the west through the parking areas in the rear. Staff is in support of this, provided that the applicant provide parking in the south portion of the lot. They have submitted a revised site plan, showing such parking, as well as screening along the rear portion of that lot, which is required by the Zoning Code and not actually stated as one of the conditions. I will stand for questions."

**GAROFALO** "I just have one question. This is not in operation now?"

**VERTS** "No. It is currently a residence."

**GAROFALO** "Because there is a tailor shop in that area, down the street a little. I wasn't sure if that was the same deal."

**VERTS** "Many of these residences have been recently converted."

**GAROFALO** "I know. Are there any other questions of Lisa? No? Okay, we will hear from the applicant."

**DAVE YEAROUT** "This Conditional Use would let this lady continue on with her business plans. This is consistent with what is happening along Central, and I am sure, as the City's plans in the future for this portion of Central and redevelopment will get resolved as a lot of the other issues that have come into play here. They will work with the City staff on making sure that this conversion on the temporary to ultimately the permanent on the parking and access will be handled. The revised site plan will address the screening issues also. Any questions?"

**GAROFALO** "Any questions of Dave? Okay, thank you. Is there anyone else here to speak on this item? Okay, then, I will take it back to the Commission."

**MOTION:** Having considered the factors as contained in policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood): The south side of Central is characterized by a mixture of residential uses, home occupations, and office uses as permitted in the "GO" General Office district, with some specific use exceptions. The requested Condition Use for a personal care service would be consistent with the zoning surrounding the subject property in three directions. Suitability of the subject property for the uses to which it has already been restricted: The subject property could be developed with uses as stipulated by the "GO" General Office District. The Unified Zoning Code allows for additional uses through the application of a Conditional Use permit, provided the applicant and site meet the review criteria as stipulated by said Code. Extent to which removal of the restrictions will detrimentally affect nearby property: This area is transitional in nature, with a general use shift from residential to office and service uses. With the provision of parking being located at the rear of the property and appropriate screening from the residential property, the approval of this Conditional Use permit should not have significant impact on the surrounding property owners or the safety of traffic along Central Avenue. Conformance of the requested change to adopted or recognized Plans/Policies: The zoning code anticipated this type of use and makes specific provision for it. Approval of this request will not be contrary to any Comprehensive Plan policies or guidelines. Impact of the proposed development on community facilities: None Identified, provided the parking area is placed at the rear of the subject property, south of the existing structure.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The applicant shall obtain all applicable permits, including but not limited to: building, health, and zoning.
2. The applicant shall provide parking south of the existing structure in the rear yard with access to the parking area along the west property line. This access off of Central Avenue and the sub-standard driveway shall be temporary, until such time as properties within Lot 4, Jim Fisher Addition, are redeveloped for other than residential uses.
3. The applicant shall submit a revised site plan, which shows parking south of the existing structure, for approval by the Planning Director. This site plan shall provide for a minimum of five parking spaces, one of which shall be handicap accessible.
4. The applicant shall submit a restrictive covenant to include the following restrictions:
  - A. At which time the remaining portion(s) of Lot 4, Jim Fisher Addition are redeveloped, the subject property shall:
    - 1) provide joint access along the west property line to rear lot parking with cross-lot access; 2) remove the temporary access from Central Avenue; and 3) share in the construction of a standard two-lane driveway to parking in the rear of the subject property and the remaining properties of Lot 4, Jim Fisher Addition.
  - B. The subject property shall provide access to Lot 5, Jim Fisher Addition, along the east property line for circulation between the rear parking areas, unless the city engineer determines that grading considerations make this impractical.
5. Any violation of these conditions shall render this Conditional Use permit null and void.

**MARNELL** moved, **WARREN** seconded the motion, and it carried unanimously.

- 
21. **Case No. DP-155 Amendment #1** – Northrock Realty Partners, Applicants (Tom Mack/Mike Boyd)/Austin Miller, agent (Tim Austin) request to amend list of permitted uses to allow "vehicle repair, limited" (Tires Plus) on property described as:

Lot 5, Frank & Johnny's Addition, an Addition to Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of 37<sup>th</sup> and north Rock Road.

**BACKGROUND:** DP-155 is located at the northwest corner of Rock Road and 37<sup>th</sup> Street North, with all parcels zoned "LC", Limited Commercial. The applicants desire to develop a retail tire sales establishment (Tires Plus) on Parcel 5/Tract C of DP-155. Parcel 5/Tract C currently contains a specific prohibition against a "public garage." A public garage was defined in the city zoning code of 1986, when the Community Unit Plan was established, as "a building or portion thereof used for the housing of motor vehicles or where such vehicles are equipped for operation, repaired, or kept for remuneration, hire or sale, not including exhibition or showroom for model cars." In 1996, the term public garage was dropped from the Unified Zoning Code. It is staff's interpretation that a retail tire sales use was included within the definition of a "public garage", and it is therefore a prohibited use.

In order to develop the tire store on that parcel, the list of permitted uses for Parcel 5/Tract C has to be amended to include the use - "vehicle repair, limited." "Vehicle repair, limited" uses are defined as uses which provide motor vehicle repair or maintenance services within a completely enclosed building, but not including paint and body shops or other general vehicle repair services. Typical uses include: electronic tune-ups, brake, air conditioning, transmission, engine, generator, starter and

tire repairs, and front-end alignments, battery recharging, lubrication and sales, repair and installation of minor parts and accessories, such as tires, batteries, windshield wipers, hoses, windows, etc." Tires Plus deals only in tires, shock absorbers, wheels, suspension or undercarriage parts. They do not install mufflers, perform tune-ups or overhaul transmissions or motors. The average customer's car is at the shop for one hour.

Parcel 5/Tract C is located west of Rock Road, approximately 300 feet north of 37<sup>th</sup> Street North. It is 1.55 acres in size and is permitted 16,500 square feet of building coverage and 20,000 square feet of gross floor area. Maximum building height is restricted to 35 feet. Only one building is permitted to be developed on the parcel.

This parcel is a sensitive site as it is at the entrance to the Willowbend neighborhood. Both sides of Rock Road are nicely landscaped and there is ample open space.

The applicant's site plan depicts a building oriented with an east-west axis.

A 6,000 square foot building is to be constructed of split-face block on all facades with its highest peak being approximately 22 feet in height. All overhead doors will face to the south. The site plan depicts two parking areas located north and south of the building. All parking observes the 35-foot building setback where adjacent to residential uses. Access to the site would be by way of the access drive located just south of Parcel 5, which connects to Rock Road. The applicants have indicated that they will not use the access point to Rock Road that Parcel 5 is currently permitted. Signage is to be restricted to the lower south-facing parapet portions of the facade and not on the higher architectural feature used to denote the building's main entrance; and to a low monument sign. They do not use outdoor speakers. The store is to be owned and operated by corporate headquarters. Their expected hours of operation are 9:00 to 9:00 weekdays, 9:00 to 5:00 on Saturdays and 12:00 to 5:00 on Sundays. The applicant also indicates that the building has extra insulation to reduce noise that might be heard outside the building.

The north line of the parcel abuts Reserve B of the Willowbend Third Addition. The northwest line of the parcel abuts residential lots located in Willowbend. There is a 35-foot building set along the northwest property line. A masonry wall has been constructed between the commercial parcels and the residences.

The south and west parcel lines of Parcel 5 abut other commercial parcels within the C.U.P. There is an access drive which separates Tract 5 from Tract 4 and provides access to Tract A. The parcel to the south has been developed with a bank and is zoned "LC", Limited Commercial. The parcel to the west is undeveloped, but is approved for most Limited Commercial uses. To the east is vacant land zoned "LI", Limited Industrial.

**CASE HISTORY:** DP-155 was approved and platted in 1986.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-6", Single-family Residential; open space and homes

SOUTH: "LC", Limited Commercial, DP-155; bank

EAST: "LI", Limited Industrial; office, vacant

WEST: "LC", Limited Commercial; vacant approved for retail uses

**PUBLIC SERVICES:** Municipal sewer and water service are available to the site. Rock Road north of 37<sup>th</sup> Street North carries an average of 5,200 cars per day. 37<sup>th</sup> Street North carries an average of 5,300 to 6,700 vehicles per day.

**CONFORMANCE TO PLANS/POLICIES:** The Comprehensive Plan depicts this site as appropriate for commercial uses. Land Use locational guidelines indicate that highway-orientated, auto-related and non-retail commercial uses should be confined to a limited number of urban areas, such as portions of Kellogg, Broadway, the CBD fringe, and other similar areas. However, limited vehicle repair and service operations are permitted by the zoning code "by-right" in the "LC", Limited Commercial district, which can be found at the intersections of most all arterial streets in the city.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. Even though the list of permitted uses is amended to include "vehicle repair, limited \_\_\_\_\_," this use is limited to sale and installation of tires, shocks, wheels, suspension parts and similar undercarriage parts and services such as alignments and air conditioning work. Gasoline sales, transmission repairs, engine overhauls and similar repair uses are prohibited.
- B. All uses are to be conducted within an enclosed building. The main building walls and roof shall be insulated to minimize noise. Overhead doors are to be closed at all times, except for vehicles entering and exiting prior to and after service. No vehicles may be parked or stored overnight on the property.
- C. The property shall be developed in substantial conformance with the site plan and elevations submitted with this application (split face block facade, overhead doors facing south, trash enclosure to be roofed and constructed of the same material as the building, no parking is allowed in the building setback lines along the north, northwest and east property lines north of the building and landscaping as specified).
- D. Landscaping and berming shall be installed as generally indicated on the site plan.
- E. Access shall be restricted to the access drive located to the south of the parcel. No direct access shall be allowed to

Rock Road.

- F. No outdoor speakers are permitted.
- G. In addition to the signage restrictions listed in the C.U.P, signage on Parcel 5/Tract C shall be restricted to one south-facing only monument type sign no larger than 64 square feet and no taller than 12 feet; and one building sign to be placed on the building as depicted on the south-facing elevation.
- H. All light fixtures shall be of "cut-off" design to direct light away from residential properties, and be mounted on more than 20 feet above grade.
- I. If the property is used for "vehicle repair, limited," then operating hours shall be limited to 9:00 a.m. to 9:00 p.m.
- J. Conditions B through H shall apply to all uses of the property.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The parcel is located adjacent to an upscale single-family residential development to the north on property zoned "SF-6", Single-family. Land to the west and south is zoned for retail uses. The parcel to the south is developed with a bank, while the land to the west is vacant. Property to the east is zoned for Limited Industrial uses, some of which is developed with an office use and some of which is vacant and permitted to be developed for a broad variety of retail/restaurant uses.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "LC", Limited Commercial subject to restrictions contained in CUP-155 – all uses permitted in the "LC" district except for food locker plants, public garages, storage garages, motels, hotels, mortuaries and filling stations and residential uses. This does leave a wide variety of uses for which this property could be developed, if the amendment is not approved.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed restrictions will minimize most detrimental impacts caused by a tire sales operation. The masonry wall, landscaping, berming, sign restrictions, and proposed building materials should minimize visual impacts of a commercial development at this location. A tire sales operation with all these controls may be more desirable than fast food restaurants and other retail uses which could be developed on this site today with very few controls.
4. Length of time the property has remained vacant as zoned. The site has remained vacant as currently zoned since 1986.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The comprehensive plan depicts this site as appropriate for commercial uses. Land Use locational guidelines indicate that highway-orientated, auto-related and non-retail commercial uses should be confined to a limited number of urban areas, such as portions of Kellogg, Broadway, the CBD fringe, and other similar areas. But this guideline was primarily intended for uses that are more intensive and not the ones permitted "by right" in the Limited Commercial district such as tire sales.
6. Impact of the proposed development on community facilities: The use should not impact traffic or other community facilities any more than other retail uses already permitted.

**GAROFALO** "This item is to be deferred. We will need a motion to defer it. Is there anyone here to speak on this item? Apparently not."

**LOPEZ** "Is the request for deferral by the applicant?"

**GAROFALO** "Yes."

**MOTION:** That the case be deferred to the January 13 meeting.

**MICHAELIS** moved, **WARNER** seconded the motion, and it carried unanimously (13-0).

- 
22. **Case No. CU-548** – Walter N. Henning (owner/applicant); Divine Towers International and Ferris Consulting (agents) request a Conditional Use to permit a commercial communication tower on property described as:

A proposed lease area lying in and being a part of the North Twenty-six and seven-eighths (26 7/8) acres of Government Lot Number Five (5), Section One (1), Township Twenty-severn (27) South, Range One (1) West, Sedgwick County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of said Lot 5; thence S 00 degrees 04'08" E, along the West line of said Lot 5, a distance of 156.10 feet; thence N 89 degrees 55'52" E a distance of 919.18 feet to the point of beginning; thence continuing N 89 degrees 55' 52" E a distance of 50.00 feet; thence S 00 degrees 04'08"E, parallel with said west line,

a distance of 50.00 feet; thence S 89 degrees 55'52" W, a distance of 50.00 feet; thence N 00 degrees 04'08" W parallel with said West line, a distance of 50.00 feet to the point of beginning. Generally located south of 29<sup>th</sup> Street North extended and east of West Street.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 100-foot commercial communications monopole for use by AT&T Wireless Services. The monopole will be sited on a 2,500 square foot area located approximately 950 feet east of West Street and 100 feet south of 29<sup>th</sup> Street North. Access to the site is to be from West Street. The applicant's site plan (attached) depicts a 50-foot by 50-foot compound enclosed by a chain link fence. Within the enclosure would be the monopole and an equipment shelter. The monopole would be constructed so as to be able to accommodate up to three carriers.

The applicant's justification for the request (attached) indicates this site is necessary for AT&T Wireless Services to provide continuous coverage west of the city in areas around I-235 and 29<sup>th</sup> Street North. Since this is a largely undeveloped area, there are not any buildings of sufficient height which might provide alternative support structures on which to locate antennas. According to a letter from an aviation consultant, this site complies with the Federal Aviation Administration hazard standards, and should not be a hazard for aircraft.

The closest existing tower is approximately 1 mile to the east. AT&T Wireless Services indicated that they are willing to rebuild this tower but that the owner (USD 259) would not allow for reconstruction of the tower. Planning staff subsequently contacted USD 259, and they indicated a willingness to reconsider allowing AT&T Wireless Services to reconstruct the tower and co-locate at their site, subject to legal opinion that this will not jeopardize the financing and approval of the Public Building Commission, both of which are expected shortly.

The nearest residentially developed properties to the site are located approximately ½ mile to the east on property zoned "SF-6". These residential properties are buffered from the site by I-235, the Big Ditch, and the Arkansas River. Immediately south of the site is property zoned "SF-20" and used for agriculture. Further to the south across the Big Ditch and I-235 are more residentially developed properties located approximately 1 mile away. Property west of the site is zoned "LC", "SF-6", and "SF-20" and is used primarily for sand mining and sludge disposal. Property to the north is zoned "LI" and "SF-20" and is used for a construction landfill, sand mining, and an asphalt plant.

There currently is a commercial communication tower study ongoing by the city and county. That study is focusing on possible alternatives to the construction of new tower structures. Due to the undeveloped nature of the property in the vicinity of this site, none of the study's alternatives to new towers is likely to be applicable in this case. This application was reviewed by a professional radio frequency engineer consulting with planning staff, and the engineer recommended that AT&T Wireless Services demonstrate why they cannot co-locate their antennas on AM radio antennas located 0.9 miles east of the applicant's search ring (report attached). The engineer also noted that these AM radio antennas are actually closer to the center of the applicant's search ring than the proposed tower. While not noted in the engineer's report, the tower owned by USD 259 is located exactly at the center of the applicant's search ring.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LI" & "SF-20"	Construction landfill, sand mining, asphalt plant
SOUTH:	"SF-20"	Agriculture
EAST:	"SF-6"	Single family residences
WEST:	"LC", "SF-20" & "SF-6"	Sand mining, sludge disposal

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to West Street, a two-lane arterial that carried, in 1996, approximately 970 vehicles per day.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Agriculture" (20 acre minimum lot size) development. The update for the Plan, now in progress, shows this area is expected to urbanize after the year 2010. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g. of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication towers.

**RECOMMENDATION:** The location of the applicant's proposed monopole is sufficiently buffered from existing residential properties, which should mitigate the negative visual impact of this monopole on residential properties to the east and south; although, future residential development in the area (expected after 2010) could be negatively impacted by the visual impact of the 100 foot monopole. In this case, options for co-location rather than new tower construction are apparently available, and according to planning staff's radio frequency engineering consultant, the applicant has not successfully demonstrated that these co-location options have been fully explored, as required by Section III.D.6.g. of the Unified Zoning Code. Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED. However, if in the opinion of the Planning Commission the application should be approved, planning staff recommends that the approval be



subject to the following conditions, which are intended to preserve the option to either raise or lower the height of the monopole in the future, and to minimize the visual impact.

- A. The Conditional Use shall be in effect for 5 years from the date of final approval. The applicant shall submit an application for extension of the Conditional Use if the use needs to be extended beyond the 5 year period.
- B. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- C. The support structure shall be a "monopole" design, and the monopole shall be located as indicated on the site plan
- D. The monopole placed on the site shall be designed and constructed, and certified by a registered engineer, such that if it collapses, it will fall within the area on which the tower is located.
- E. The color of the monopole shall be silver or gray or a similar unobtrusive color.
- F. There shall be no lighting of or on the monopole.
- G. The monopole shall not exceed 100 feet in height.
- H. The antenna shall be placed as close as possible to the monopole, utilizing the "dual polarization" or similar method.
- I. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the land immediately adjacent to the site is suburban, with primarily industrial and agricultural uses. Future urban development is not expected in the immediate vicinity of the site until after 2010.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-20, Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed. Constructing the tower likely will hinder the development of single family residences in and around the site due to the negative visual impact of the tower.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest residentially developed properties are located at least ½ mile away and are buffered from the site by I-235, the Big Ditch, and the Arkansas River; however, the negative visual impact of the proposed 100 foot monopole could detrimentally affect the suitability of surrounding property for future development.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. In this case, options are apparently available to provide cellular phone service to this area at a reasonable cost by co-locating at one of two existing tower sites. The applicant has not successfully demonstrated that these co-location options have been fully explored, as required by Section III.D.6.g. of the Unified Zoning Code.
5. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.

**KNEBEL** "The applicant is requesting this monopole in order to provide wireless phone service in the areas of I-235 and 29<sup>th</sup> Street North. There are existing towers in the area. AT&T has indicated that one tower that is located one mile to the east would suit their needs. This tower is owned by the school district and the school district has initially indicated to AT&T that they are unable to utilize this site at this time. Planning staff has contacted them and the school district has reiterated that they are unable to provide access to that tower at this time, however they were willing to look into the issue and in the near future, perhaps, provide access to this tower rather than the construction of a new tower.

In your back-up to your staff report, there is a study done by a radio frequency engineer that the Planning Department has consulted with who has suggested that perhaps this tower, which is located south of 29<sup>th</sup> Street on Salina, which is the location of an old radio station that has been abandoned could be used. The applicant has indicated that the other tower is much more suitable to their needs, however. The City and County are currently conducting a study to determine the long-range future of facilities such as this. This particular facility, if it is unable to be located on an existing tower, and a tower is required at this site, that study probably will not recommend anything different other than what the 100-foot monopole has requested, since this site is undeveloped now and is not, at least in the immediate future, for development.

The Land Use Guide recommends that this area is appropriate for agriculture. The update to the Comprehensive Plan that is currently under way indicates that this area is expected to urbanize; however, not until after the year 2010, so it would be another at least 10 years. That is the expectation for urbanization in this area. The Plan does not speak specifically to telephone or cellular phone service; however, it does state that utility services should be provided to the public at a reasonable cost. The Zoning Code lists 5 conditions under which commercial towers are subject regarding their paint scheme; being unobtrusive; no night-time lighting or warning lights except for aircraft; no advertising and the applicant must demonstrate that an attempt has been made to co-locate on existing towers rather than constructing new towers, and the applicant must provide space on the tower for at least two other cellular phone companies to locate.

This location that you see here is about as well buffered from existing residential properties as you can get. There is about a quarter of a mile of land that is probably undevelopable, I think. As a matter of fact, if you go due east, I think all of that is right

of way and there is no developable land in there. In this case, however, there is some question as to whether or not the applicant has demonstrated whether or not this tower could not be located to the east at the Pleasant Valley School.

The Planning staff has recommended that this case be denied; however, if the Planning Commission feels that this case warrants approval, we have listed a set of conditions under which we think this approval should be provided. One of those being that the Conditional Use should be good for five years, subject to extension, based on continued demonstration of need; that the requirements of the Unified Zoning Code be adhered to regarding primarily the co-location requirement and continued demonstration that that is not possible. Also, that the tower be constructed as a monopole and located, as indicated on the site plan that the monopole should be designed so that it would collapse within the area that is being leased; that the color should be silver or gray; no lighting; restrict the height to 100 feet; have the antenna on the monopole be designed so that they are as close as possible to the tower, utilizing a method of dual polarization or something similar to that and then also that the monopole, for future expansion purposes, be constructed and designed so that the height could be extended by up to 30 feet. I am available for questions."

**BARFIELD** "As I understand it correctly, you are saying that there are at least two existing towers that are not in use that would meet the qualifications of what the applicant is seeking here?"

**KNEBEL** "Primarily, there is one tower, I think that this particular tower at Pleasant Valley School, according to the applicant. This other tower that our consulting engineer recommended as possible is too close to a tower to the east that they are already going to be putting their facilities on. So this tower here, in conjunction with the rest of their network would not work, according to the applicant. I think if we provided additional information to our engineer, they would concur with that."

**BARFIELD** "Now, that is the one at the abandoned radio station?"

**KNEBEL** "Yes, that is correct, and then this is the one at the Pleasant Valley Middle School."

**MARNELL** "I need to note for the record that I have been contacted on Items 22-25 by the agent for the applicants."

**WHEELER** "I have a question. I thought I understood you earlier that the school, at this time, is not willing to allow someone to locate on that tower. It is not available."

**KNEBEL** "Well, they are currently working on allowing it. They have indicated an interest in allowing cellular phone companies to locate on this, but there are some dealings that need to be resolved with the Public Building Commission, and they are working on that. They have indicated a time line of being able to lease some space on this tower or allow somebody to reconstruct it by February."

**KROUT** "I spoke to Martin Libhart, who is their manager, and they indicated very positively that the school district wants to be involved in this and they have identified about a dozen sites, one of which was the Pleasant Valley site that they are interested in providing information to, but the way they would go about it that they first would have to finish the legal requirements, which they think are going to take something like a few weeks, and they have already had their bond counsel and they feel that this is something that they can do, but they need to get a little bit more paper work done and then they need to send out a request for proposals, according to their requirements. They will do that in January and they feel that they could then make a decision by the next month."

**HENTZEN** "I want to ask Scott, this request appears to be an excellent location for a tower."

**KNEBEL** "Right. We concur that this is about as well buffered as you can be."

**HENTZEN** "Knowing what you know about the school response and knowing what you know about that other abandoned tower, what are you using to recommend denial? In other words, your report says to deny it, but on what basis?"

**KNEBEL** "Based on the fact that they have not demonstrated that the co-location opportunity is not available."

**HENTZEN** "I will let the applicant address that."

**MARNELL** "Let me ask a clarifying question. As of this date today, when we are hearing this, will the school district allow use of that tower or replacement for a different tower?"

**KNEBEL** "No."

**MARNELL** "Thank you. I have one other question. This site, where the proposed location is, that looks awfully close to one of the proposed routes for the bridges that we are looking at in the Transportation Plan from 25<sup>th</sup> Street to 29<sup>th</sup> Street. Would that interfere with that if that ended up being there?"

**KROUT** "No, there is no conflict. Preliminary alignment has been laid out with detailed design and it would cross West Street south of 29<sup>th</sup> Street."

**GAROFALO** "Are there any other questions? Okay, then we will hear from the applicant."

**GREG FERRIS** "Thank you, Mr. Chair and members of the Planning Commission. I want to congratulate you on a long day. I will try to be as brief as possible, but there are some technical issues that may take a little bit of explanation.

I represent AT&T Wireless. Welcome, Mr. Barfield, it is nice to see you, congratulations on your appointment. I have several members of the Divine Tower team here, if you have specific questions, I will direct those to them, including RF engineering and construction questions.

Just an overview, quickly, of what AT&T Wireless is doing in Wichita and Sedgwick County. In Sedgwick County, we are building 39 wireless sites. Of these 39 sites, 5 of them are new tower construction. Almost 90 per cent of all of the facilities are being erected by AT&T Wireless are, indeed, existing locations. We designed our entire system to go on existing towers where it was available, including the Pleasant Valley School. Pleasant Valley School has not been available. I talked to Martin this week and he indicated to me that they hoped they would have a legal opinion by the middle of January so they could have it on their agenda then. And if it was approved then, and if you know the way the school board operates, it takes two meetings to approve something. Once that is approved, and that is only in form, that is not for the RFP, etc., it may be February before they are even ready to go out for RFPs. It would be very likely March before they could do anything, and that is IF they can overcome every hurdle they have. It is not that this is a done deal by any stretch of the imagination. If it was, AT&T would gladly rebuild that tower. If we could go on the Pleasant Valley School and have some degree of assurance, because I talked to Martin this week and asked him if he could give some degree of assurance that we would be able to co-locate on your tower, or build a new one, and his answer to me was 'no, I cannot give you assurance'. You all have been around government enough to know that the wheels of government often turn slower than they anticipate. They also have legal issues that they have to overcome.

So, on all of the sites that you are going to hear today, and I am trying to give you an overview that I won't have to repeat, on all of the sites that you are going to hear today, this is the last resort. We tried everything possible not to build any new towers. Close to nine months ago or so, we met with staff, the AT&T team before I joined them, and said they were going to build a system out here, what would you like us to do? Staff said to co-locate or go on rooftops. Almost 90% of that was accomplished. Frankly, to build out an entire system with 90% co-location is unheard of. We went the extra mile.

Planning staff is recommending denial. They cited the AM tower. There are problems with AM towers and PCS technology. They don't necessarily co-locate on each other, and if you would like more specific, I have an RF engineer who could explain that. I think we have talked about the Pleasant Valley School. Let me just read to you, real briefly, what the Zoning Code actually says. The Zoning Code says 'at the time of requesting a building permit for a communication tower, the applicant must demonstrate to the satisfaction of the Zoning Administrator that there is no available space on existing or proof towers or other structures that can be utilized to meet the applicant's needs. That there is no physically and/or fiscally feasible opportunity to rebuild an existing tower or other structure on which the communication equipment may be located'.

At the time of building permit, I have to demonstrate to Mr. Krout that the School Board is not going to allow me to go on their tower. I will have to demonstrate that as part of the Code. We agree with that part of his recommendation and we are fully willing to comply with that at that time. Mr. Krout can then pick up the phone at the time we actually submit our building permit and say 'is this tower ready to go at Pleasant Valley?' If the answer is yes from the School Board, he doesn't have to give us our building permit. So to worry about that today as a reason for denial is not necessary. We are going to have to demonstrate that without exception at the time of building permit. So I would like to make that point real clear.

Gary, do you have some pictures of residential? Do you want to pass those around? You can just look at these because this will apply to two of the three applications today. As far as can monopoles locate in or near residential areas, I am going to show you some pictures. These are in Wichita. This will give you a chance to see what a monopole is. These are 120-foot monopoles. One of them is the Millpond Addition. If you look in the back, there are notes on where they are, how far they are from existing towers. So you can see that these are not owner's towers.

There is a misconception of lattice towers and the kind of construction that goes on with those. We are not building those, we are building monopoles. These are not visually unattractive structures. Some people may not think they are the most beautiful, but they look very much like a power pole. In fact, there is one picture there that shows in a perspective, it looks almost just like the power poles. So, we don't believe that those are issues.

We do concur with most of the recommendations of staff as they recommend them, if you were to approve this. We do have three very strong objections though. First of all, we object to the letter A condition, the five-year limitation for a Conditional Use. First, we believe this discriminates against AT&T Wireless services. No other carrier has been asked to do this. This is a brand new thought. You all that have been here a while have done many Conditional Use permits. You just did a couple and there were no time restrictions on those. We think, at AT&T, this is setting a dangerous precedent for development as a whole, but just from a financial standpoint, even the consultant that staff hired cited that it takes six years to even break even on a site. We are investing \$400,000 to \$500,000 on a site. For us, then, to have to come back in five years and justify its existence may be very difficult as development occurs and other things happen. Just because there may be changes in technology, we believe that five years is extremely onerous. We think it is a very dangerous precedent to start applying these to Conditional Uses. It will be a discussion as part of the planning process in the plan that may or may not be time restrictions in there, but I certainly don't believe that this is the appropriate place to start that process.

We also object to the letter D that these need to collapse upon themselves. It is not in my letter. Since I wrote that letter, I have gotten advisement and have a head of construction for Divine here if you have some questions. Monopoles aren't built to collapse on each other. They don't design them that way. They erect them 30 foot into the ground, or 20 foot into the ground,

and if you want more details, Gino is here and would be glad to explain that to you. These things, when they went through the Andover tornado, if you all remember, Cellular One, who is competition, but still if you will remember, they had big advertisements that the only way you could have communication after the tornado was through cellular phones. Do you know why? Because the towers were still standing. These things are built in such a way that they will be the last thing standing if you have major wind events or tornadoes. No. 1, they can't be built to collapse upon themselves or that weakens the structure and then causes them to be not what you want them to be in the first place, which is as strong as possible.

Finally, we also have a problem with item H, the requirement for dual polarization. Again, I have an RF engineer, if you would like more detailed explanation than I can give you on this. Basically, we started this system, based on the information we had. We are under construction on near 15 sites, not new towers, but sites, co-locations. We have equipment already in house for another 15 sites. For us to switch to dual polarity antennas or like type of technology at this point would require us to go back and redesign, send equipment back and those types of things. We don't believe they are necessary and if you have questions on what happens when you do that, the reason it has to be designed, I have an RF engineer here who would be glad to explain that in much greater detail.

We encourage you to approve this. We support the staff's recommendations except for items A,D and H. Thank you very much. If you have any questions, I will be glad to answer them for you."

**BARFIELD** "Mr. Ferris, you mentioned that you are investing about \$500,000 per site?"

**FERRIS** "That is correct."

**BARFIELD** "What would it cost you if you were able to utilize the Pleasant Valley facility?"

**FERRIS** "It is very similar. There wouldn't be much difference. In fact, it would probably be a little cheaper. That is why we don't have any problem co-locating because you don't have to do some of the same studies because there is already an existing tower there, especially if you can co-locate. If you have to rebuild, it would probably be about the same price."

**BARFIELD** "If we were to approve this today, when would construction start on your proposal?"

**FERRIS** "We don't have any construction drawings. We have to go out and do geo-techs. We would anticipate trying to file a building permit in the next 30 days at which time Mr. Krout would check with the school district to see if this site was indeed available. If it is not available, construction would happen shortly after receiving the building permit."

**BARFIELD** "So it could conceivably be March before you could actually start construction?"

**FERRIS** "No. This site is scheduled to be on-line, operational and putting out radio frequencies by the first of March."

**GAROFALO** "Are there any other questions?"

**KROUT** "Mr. Ferris, in the discussions we have had before about the issue of timing, which I think as we start to look at new towers in the future, it would be dangerous not to set some sort of time period. Previously, you indicated that your clients could accept a 10-year limitation, but not a 5-year limitation. Have they changed their minds about that?"

**FERRIS** "No. Actually, that was a conversation that I knew, under no circumstances could they ever do under 10 years because I had to negotiate a lease with the City and it was 10, so I knew that they couldn't accept anything less. That was on a rooftop. Rooftops are a little different than towers. They are quite a bit less expensive to do. So, when I approached my client regarding this, they were very much against time limits and the 10 year that I indicated to you was what I knew they couldn't in no way ever accept because that was a deal killer on the lease itself with the City. There is a representative here from Lucent Technology and she might be able to address that in greater detail if you have further questions on it."

**KROUT** "I do have a question about the dual polarization. Without getting into great detail, my question is whether or not the issue is that because all of the rest of your system that is planned is not dual polarization, there is a technical problem with any new towers going in, or is it just a matter of fact that you have ordered equipment already and you want to make use of the equipment that you have ordered."

**GREG FERRIS** "This is Raphael Suarez, with Lucent Technology and is an RF engineer."

**SUAREZ** "The problem we have with using the dual poles is that we get less coverage and at the same time, it doesn't offer you what they call 'spatial diversity'. You have experienced this in FM radios. If you just move the dial a little bit and it improves your reception. That allows you to put two separate receiving antennas. With dual pole or dual slant antennas, you are only allowed one there, plus if you have to expand later on, you are very limited. There is no way you can add to and expand the system any more.

The coverage limitations with dual pole actually limits your coverage to about 70% of what you achieve with a normal system like what we are proposing right now. "

**FERRIS** "Marvin, if I could explain that a little bit in English, what my understanding of that is is that if you put a dual pole here we are going to need another site. We are going to have to build another site. It won't lower this site and it won't make the next site less than 100 feet, but by using dual poles, dual polarity sites work real well in highly concentrated residential areas

where you are getting into the capacity and residential site phase of your completion. The initial phase that we are in is the coverage phase and if we are going to go to the capacity phase, which is what you are requiring with dual poles, then we are going to have to go in and redesign this entire system to cover. We have five sites that are on the perimeter that will have a coverage reduction of 30% to 40%. Does that explain it a little? That is my understanding of it."

**KROUT** "I wish we could have had this discussion with our consultants before we got to the time of the public hearing."

**FERRIS** "Actually, if you recall, we had this discussion with your consultant when our other RF engineer was here. We discussed this issue, and at that time he said we were too far along and would have to redesign our entire system if you wanted us to go to dual pole sites. I was sitting right there when we had that discussion. There was not any rebuttal from your RF engineer that argued 'no, you really can't' and why. There was no exchange at that time, so at that time, my understanding was that your consultant understood that we weren't going to be going in that direction."

**KROUT** "Well, yes, I think that is what he heard, but I think he has also advised us that it really can be a case-by-case situation. But it is another argument, I think, for why we ought to take a look at these towers and their design at some point in the future. "

**HENTZEN** "Greg, I think I agree with you on this length of time, five years, ten years or whatever. What I am wondering is with the technology changing so rapidly, what would happen if we said to the owner of the tower 'if you don't need it anymore, you have to take it down'. What does that mean, rather than have a whole bunch of towers that are not being used anywhere?"

**KROUT** "We have that permission in the Code already."

**HENTZEN** "Oh, we already have that provision? Okay."

**FERRIS** "And we accept that provision and are willing to comply with that at any stage. I don't want to take up a lot of your time, and these will be the same questions and issues on all three cases, so if I can get these out now, we won't have to necessarily deal with them on the other two cases."

On the issue of the time frame and why, when I talked to AT&T directly and asked them their feeling on time frames and Conditional uses, his comment to me was 'what if you have somebody who wants to build a system so that you can have coverage for citizens here and competition is good, and we have very low cell rates here because we have competition, and with AT&T coming to town, it will be even lower because there will be even more competition, but Wichita is not a City of millions of people where AT&T, Sprint and Cell One are going to come in and change their technology every few years in this market. We are going to have cell phones and we are going to have data systems that operate on cellular systems, but to think that we are going to get all of the technology that is going to come through, I think is not an accurate fact. We will get some of it.

So what we are doing is predicting on what the technology will be, but if somebody wants to build a system and just leave it there for 20 to 30 years for the use of citizens and everybody is happy with that, then why would you restrict that at this point? That is the issue or the question that we have. AT&T may or may not upgrade their system in five or ten or fifteen years. It may be that the system that exists is what the citizens are satisfied with. And I will ask you, there are monopolies all over the city limits, in residential areas, in commercial areas, have you ever received a complaint about an existing monopoly?"

**KROUT** "In fact the College Hill president told me he is receiving complaints about Cellular One's 120 foot monopole that was just put up in Carriage Park a week ago."

**FERRIS** "That is College Hill though."

**KROUT** "That's right. So, how progressive is it?"

**MARNELL** "Since I doubt that you can answer this, is your construction Engineer prepared to discuss the structural design?"

**FERRIS** "Sure. Gino can do that. Come on up, Gino."

**MARNELL** "What is the wind loading with radial ice design criteria on that pole?"

**GINO STYMAN** "They are designed for 80 mile per hour wind loading and half inch ice. And the structure of the monopole is a monoco construction, so it is intended to support itself. That is why it is the slim line design and it looks so nice."

**GAROFALO** "I have a question. On Condition I, is that necessary? Maybe staff should answer this question."

**FERRIS** "We have no problem with this, and I think what this issue is is that in the future, if there are going to be other carriers in the market, what staff is trying to avert here is the need for another pole. Let's say the schools don't get their issues worked out and that is never available, or another site where we are looking at, where there isn't anything around. They are looking at the opportunity to make sure that if Leap Wireless, who is coming to town in the future comes in and says 'there is nothing there tall enough for us to get coverage' they can say 'you can go over to the AT&T tower and add 30 feet. We know you can do that, it is already built for that, because we are requiring that'.

If you want to leave that out, we don't have any problem with that either because this is more difficult for us, but we are willing to accept this as a condition."

**MARNELL** "I have a question and this may have to do with the RF engineer. The consultant is reported to have said that he was going to recommend denial of this, having to do with the documentation of the AM tower. Has that been addressed with staff?"

**FERRIS** "We have sent them a follow-up. We actually spent a week and a half trying to contact the consultants so that we could have the RF guy explain his position and they were unable to ever make contact."

**MARNELL** "I guess I was a little surprised by that. Are cellular towers ever put on AM towers?"

**SUAREZ** "The AM tower system, broadcast AM towers are kind of a different situation. Because the whole tower itself is live. That is the whole antenna in itself."

**MARNELL** "I am aware of that and I have never seen on an AM tower."

**SUAREZ** "Exactly, and that is the reason why we cannot co-locate on them."

**MARNELL** "I was a little surprised that the consultant would say that."

**KROUT** "Well, I think he told us that there may be circumstances where you can, but again, this is a case-by-case situation and the two engineers weren't able to discuss more specifics about this particular case."

**MARNELL** "Well, and I may be 6 foot tall in the future, but I kind of doubt it, Marvin."

**KNEBEL** "The particular tower that I showed you in the photograph does have co-locations on it currently. They may not be PCS, but it does have co-locations."

**KROUT** "You also know that engineers often claim that they can do anything with regard to materials, etc."

**GAROFALO** "Are there any other questions of the applicant? Is there anyone else to speak in favor of this application? Anyone to speak in opposition? Seeing none, we will take it back to the Commission."

**BARFIELD** "I have a question of staff. You state here that the applicant has not successfully demonstrated that these co-location options have been fully explored. Now, does that mean that that would be the case until such time as the Board of Education (B.O.E.) says a definite 'no' to the applicant?"

**KROUT** "I think what we are saying is that three more months is not an unreasonable amount of time and we would prefer to look for, in the spirit of the ordinance, which is to try to locate other existing towers where possible, recognize that the school district is now looking at the revenue potential from this and we know that there are other systems that aren't fully deployed and that Cellular One picked up a year or two years before they finally filled their gap in College Hill with the tower that they just put up a week ago, so we are just saying that we think it is worth the wait, not an indefinite wait, but it is worth two or three months to see whether or not USD can fulfill their desire."

**GAROFALO** "Let me ask Greg a question. In relation to this question, you indicated, if I understood correctly that you aren't planning on doing anything immediately?"

**FERRIS** "Well, as soon as we get approval. We can't do anything until we have approval. As soon as we do, we will start the process. We are on a very short time frame to build out our system and get it up and running. Our intent is to have this system completed and operation by April. Period. I told Martin 'if you will tell me with absolute certainty that this towers are going to be made available to AT&T Wireless by March 1, we will accept that. He could not do that. We do not know, and neither does the school board nor the Planning staff, and neither does the administration if this is going to be acceptable in the year 2000. They think it will, they would like for it to be, but we don't believe that those are reasonable enough situations for us to be denied."

**GAROFALO** "But let me just add that in the event that they did come through with some sort of a approval to go ahead and use the towers or that point in particular and you had not gotten to the point of construction or anything like that, would you consider using it?"

**FERRIS** "Absolutely. In fact, that is what my statement was. The Zoning Code requires that. We cannot start construction until he has signed the building permit."

**KROUT** "When he submits the building permit, whenever that time is, then that question will be answered."

**GAROFALO** "Okay."

**FERRIS** "That is why we believe that it is irrelevant at this time."

**MARNELL** "I think my question is of Scott. Do we have a Catch 22 situation here with that other tower for these people to carry on with their business? Is that tower at that school located in the City limits?"

**KNEBEL** "Yes, it is."

**MARNELL** "Are we not under a moratorium there that has been extended?"

**KNEBEL** "You could reconstruct an existing tower under the moratorium."

**MARNELL** "Under the moratorium? Okay. And the height change and everything would not interfere with that?"

**KNEBEL** "Right."

**MCKAY** "Under the spirit of the Ordinance, and we have been listening to that now for about 5 or 6 months, and we have had a lot of these brought before us and we sat down with the City Council and the County Commission, and all this guy, our so-called consultant, was to sell his product to the City. I think it was very evident by the comments made by the City Council and the County Commission that they thought he was going to come back with some kind of a program and he came back with absolutely nothing except what he was wanting to sell himself. That was my personal opinion."

I think the longer we keep putting this off, the worse shape we are going to be in. If this was in a residential area with houses all around it, we did turn one down at the Oliver and Central area because of the one that was already approved not too far away and we made requirements for it to be a little higher so we could use it. So, in the spirit of the Ordinance, we could piddle around here for another 5 or 6 months and still be sitting right where we are at today, in my personal opinion, and that is what will happen. If we went to the school board, we might be sitting here 6 months or a year from now, letting them decide whether or not we can use their tower."

**BARFIELD** "This is to Mr. Ferris. You say that your system will be in place and operational by March 1?"

**FERRIS** "April 1."

**BARFIELD** "By April 1, okay. You once said March 1."

**FERRIS** "March 1 on this tower, the entire system by April 1."

**BARFIELD** "That is what I am trying to find out. By the system, you are speaking of all of the towers, not just this one. What effect will this one have on the system if it is not approved?"

**FERRIS** "It creates a hole in the system, in which case if someone is driving along I-235 using an AT&T phone, they lose their call, or if someone wants to initiate a call as they are driving along I-235 they would not be allowed to because it would drop calls."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10, taking into consideration the staff findings (The zoning, uses and character of the neighborhood: All of the land adjacent to the site is currently zoned SF-20 or SF-6. The character of the land is primarily suburban, with single family residences located as close as 400 feet to the east of the site and dozens of existing residences within sight distance of the proposed structure. Urban development of single family residences is rapidly approaching from the north and west. Commercial communications towers of 150 feet in height do not fit within the character of a residential neighborhood, and substantial residential development is likely to occur around this site within the next 10 years, as indicated by the update for the Comprehensive Plan, now in progress. Sufficient land is available to the north along Kellogg, which is identified in the Land Use Guide as appropriate for commercial development, as a more suitable location for the 150-foot monopole. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-20, Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed, and constructing the tower likely will hinder the development of single family residences in and around the site due to the negative visual impact of the tower. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located approximately 400 feet east of the site, with dozens of existing residences within sight distance of the proposed structure. A 150 foot monopole constructed this close to existing residences could negatively impact property values due to the negative visual impact of the tower. In addition, much of the land around the site is undeveloped but in the path of rapid urban development. The negative visual impact of the monopole could detrimentally affect the suitability of surrounding property for future development. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. In this case, an option is apparently

available to provide cellular phone service to this area at a reasonable cost by co-locating at an existing tower site. The applicant has not successfully demonstrated that these co-location options have been fully explored as required by Section III.D.6.g. of the Unified Zoning Code. In addition, the Land Use Guide of the Comprehensive Plan identifies land to north of this site along Kellogg as appropriate for commercial development, and this is a more suitable location for a 150 foot monopole. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The support structure shall be a "monopole" design, and the monopole shall be located as indicated on the site plan
3. The color of the monopole shall be silver or gray or a similar unobtrusive color.
4. There shall be no lighting of or on the monopole.
5. The monopole shall not exceed 100 feet in height.
6. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet.

**MICHAELIS** moved, **CARRAHER** seconded the motion.

**MICHAELIS** "Obviously, this is about as good of a site as you could ever hope to get, and the fact that it is covered under the building permit requirement that if the Pleasant Valley site becomes available, at that time they would have to do that. I think we have our bases pretty well covered. I, like John, hate to sit around and wait for the school board because I know what that can entail."

**BARFIELD** "Are you saying, in your motion, that should the school board decide to open this up again, that that is the direction they would take?"

**MICHAELIS** "Yes. They have to. If it comes up to that time and he goes down to get the permit and the school board has said okay, then they have to go with that."

**GAROFALO** "Does everybody understand the motion? Okay. We will do a voice vote on this one."

**VOTE ON THE MOTION:** The motion carried with 12 votes in favor, 1 in opposition  
(Platt).

**PLATT** "Just let me state my reason for dissenting. I think there is a lot of wisdom behind this motion, but what I don't like about it is that I think we should put the school district on record **unable to hear** trying to make a decision, and I don't think this does it. We have the Holiday season coming up and if they get a building permit they could go ahead and do it, and at that point, we won't have any response. I think we should say 'okay, if by the first part of February meeting, we don't have a statement from the school board, let's go ahead and approve it. So, I am voting against the motion."

**GAROFALO** "What is the possibility, Marvin, of us sending a communication to the school board saying that we are going to have a bunch of these cases?"

**KROUT** "This is the one of the ones that we have in mind. They know that there are future towers coming up. This is the only one that involves the possibility of co-location. They are moving as fast as they can, and unless you were going to, in some way, delay this, or condition this, then I don't think a letter to them is going to do any good. I think they are aware of the situation."

- 
23. **Case No. CU-547** – Bernard and Betty Novick (owner/applicant); Divine Towers International and Ferris Consulting (agents) request Conditional use to permit a commercial communication tower on property described as:

A part of the northeast quarter of Section 4, Township 28 south, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County Kansas, being more particularly described as follows: Commencing at the northeast corner of said northeast quarter; thence south 89 degrees 04'57" west along the north line of said northeast quarter, a distance of 1510.26 feet; thence south 00 degrees 55'03" east a distance of 214.42 feet to the point of beginning; thence continuing south 00 degrees 55'03" east a distance of 75 feet; thence south 89 degrees 04'57" west, parallel with said north line, a distance of 75 feet, thence north 00 degrees 55'03" west a distance of 75 feet; thence north 89 degrees 04'57" east, parallels with said north line, a distance of 75 feet to the point of beginning. Generally located south of Pawnee and east of Webb intersection.

**SCOTT KNEBEL**, Planning Department, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:



**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 150-foot commercial communications monopole for use by AT&T Wireless Services. The monopole will be sited on a 5,625 square foot area located approximately ¼ mile west of Greenwich and 215 feet south of Pawnee. Access to the site is to be from Pawnee. The applicant's site plan (attached) depicts a 75-foot by 75-foot compound enclosed by a chain link fence. Within the enclosure would be the monopole and an equipment shelter. The monopole would be constructed so as to be able to accommodate up to three carriers.

The applicant's justification for the request (attached) indicates this site is necessary for AT&T Wireless Services to provide continuous coverage for areas east and northeast of McConnell Airforce Base. Since this is a developing area, there are not any buildings of sufficient height which might provide alternative support structures on which to locate antennas. According to a letter from an aviation consultant, this site complies with the Federal Aviation Administration hazard standards, and should not be a hazard for aircraft.

The closest existing towers are 0.9 miles to the southwest and 1.1 miles to the southeast. AT&T Wireless Services indicated that they are willing to rebuild the tower located 0.9 miles to the southwest but that the owner (Southwestern Bell) would not allow for reconstruction of the tower. Planning staff subsequently contacted Southwestern Bell, and they indicated a willingness to reconsider allowing AT&T Wireless Services to reconstruct the tower and co-locate at their site.

The nearest developed properties are numerous single-family residences located approximately 300 feet to the north on property zoned "SF-20" and platted as the Spurrier Gardens Addition. Approximately 800 feet west of the site is a single-family residence on an agricultural lot on property zoned "SF-20". Property to the east and south of the site is zoned "SF-20" and is primarily undeveloped and used for agriculture with a few single family residences on large lots to the south and numerous single family residences across Greenwich over ¼ mile to the east.

There currently is a commercial communication tower study ongoing by the city and county. That study is focusing on possible alternatives to the construction of new tower structures. When complete, the study will likely recommend consideration of alternatives to constructing a 150-foot tower in a developing residential area as the applicant has proposed. These alternatives likely will include constructing greater numbers of shorter structures to provide wireless phone service in residential areas. This application was reviewed by a professional radio frequency engineer consulting with planning staff, and the engineer recommended that AT&T Wireless Services demonstrate why they cannot co-locate their antennas on either of the existing towers located 0.9 miles to the southwest or 1.1 miles to the southeast rather than construct a new monopole (report attached). While not noted in the engineer's report, the tower owned by Southwestern Bell is located at the center of the applicant's search ring. Also not noted in the engineer's report, are two radio frequency plots submitted by the applicant, one for a 100 foot monopole and the other for a 150 foot monopole. Based on these two plots, a 120-foot monopole would seem to provide adequate coverage.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Single family residences  
SOUTH: "SF-20" Agriculture and large-lot residential  
EAST: "SF-20" Agriculture and single family residences  
WEST: "SF-20" Agriculture and large-lot residential

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to Pawnee, a two-lane arterial that carried, in 1996, approximately 2,155 vehicles per day.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Suburban" (1 acre minimum lot size) development; however, the update for the Plan, now in progress, shows this area as appropriate for urbanization in the next 10 years. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g. of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication towers.

**RECOMMENDATION:** Given the location of the monopole within approximately 300 feet of existing residential properties and the 150 foot height of monopole, the monopole will have a negative visual impact on neighboring properties and hinder the development of surrounding property for residential purposes. In addition, options for co-location rather than new tower construction are apparently available, and according to planning staff's radio frequency engineering consultant, the applicant has not successfully demonstrated that these co-location options have been fully explored, as required by Section III.D.6.g. of the Unified Zoning Code. Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED. However, if in the opinion of the Planning Commission the application should be approved, planning staff recommends that the approval be subject to the following conditions which are intended to preserve the option to either raise or lower the height of the monopole in the future, and to minimize the visual impact.

1. The Conditional Use shall be in effect for 5 years from the date of final approval. The applicant shall submit an application for extension of the Conditional Use if the use needs to be extended beyond the 5-year period.

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The support structure shall be a "monopole" design, and the monopole shall be located as indicated on the site plan
3. The monopole placed on the site shall be designed and constructed, and certified by a registered engineer, such that if it collapses, it will fall within the area on which the tower is located.
4. The color of the monopole shall be silver or gray or a similar unobtrusive color.
5. There shall be no lighting of or on the monopole.
6. The monopole shall not exceed 120 feet in height to lessen its negative visual impact.
7. The antenna shall be placed as close as possible to the monopole, utilizing the "dual polarization" or similar method.
8. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet.
9. A landscape plan shall be submitted for approval by the Director of Planning, which provides densely planted evergreen trees around the chain link enclosure to lessen the negative visual impact of the monopole.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All of the land adjacent to the site is currently zoned SF-20. The character of the land is primarily suburban, with single family residences located as close as 300 feet to the north of the site and hundreds of existing residences within sight distance of the proposed structure. Urban development of single family residences is rapidly approaching from the north and west. Commercial communications towers of 150 feet in height do not fit within the character of a residential neighborhood, and substantial residential development is likely to occur around this site within the next 10 years, as indicated by the update for the Comprehensive Plan, now in progress.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-20, Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed, and constructing the tower likely will hinder the development of single family residences in and around the site due to the negative visual impact of the tower.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located approximately 300 feet north of the site, with hundreds of existing residences within sight distance of the proposed structure. A 150 foot monopole constructed this close to existing residences could negatively impact property values due to the negative visual impact of the tower. In addition, much of the land around the site is undeveloped but in the path of rapid urban development. The negative visual impact of the monopole could detrimentally affect the suitability of surrounding property for future development.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. In this case, options are apparently available to provide cellular phone service to this area at a reasonable cost by co-locating at one of two existing tower sites. The applicant has not successfully demonstrated that these co-location options have been fully explored as required by Section III.D.6.g. of the Unified Zoning Code.
5. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.

**KNEBEL** "There are existing towers in this area. (Indicating) There is one right here and there is another existing tower just off of this picture in this corner down here. This is the tower along Webb and this is the tower near Greenwich and 31<sup>st</sup> Street South that are in the area that could be potential co-location sites. The engineer that consulted with the Planning staff recommended that the applicant demonstrate why neither (indicating) this site or this site is not applicable in this instance. The applicant indicated that this site is a tower owned by Southwestern Bell and is a preferred site to them. The issue is similar to the other issue, the owner has indicated that they are not willing to allow AT&T to reconstruct at this site. The Planning staff contacted them and they said they would reconsider. I will let the applicant speak to whether or not they have again changed their mind on this particular issue.

The Planning staff's recommendations are based on the conversation that we had with the owner of this particular tower. Actually, the tower is going to be located here and you have platted lots here that run all the way over to Greenwich. You have hundreds of homes within the area at the Pawnee and Greenwich intersection, and you also have rapid development approaching from the west, which will put this tower within soon to be developed residential zoning. Because of those reasons, Planning staff is recommending to deny this application as well; however if the Planning Commission deems it appropriate to

recommend this site, we have a list of conditions. They are the same conditions as the case before, with the exception of Condition G, which indicates that the tower be no taller than 120 feet rather than the 150 feet that the applicant is requesting. I think the applicant will tell you that they are in concurrence with that and that it will work for them. We also recommended required landscaping. "

**GAROFALO** "Are there any questions of Scott?"

**WARNER** "When you talk about the landscaping, how do you get 120 foot tall landscaping?"

**KNEBEL** "Primarily the landscaping would be for the equipment that is at the base of the tower. If you can see, this picture is dark, but this here is the equipment that is at the base of this tower, and what the landscaping would do would be to shield that from view of the residential properties."

Wheeler left the meeting at 3:43 p.m.

**HENTZEN** "You indicated that you had been in touch with Southwestern Bell, and you rendered an opinion on what they said. Do you have that in writing?"

**KNEBEL** "No, I don't. And neither do they."

**HENTZEN** "In other words, it is not very sure."

**KNEBEL** "No, none of it is, that is correct."

**MARNELL** "I will make a comment with regard to that. It is fine with me that it is on the record. I have about a 35-year history of dealing with that company and I have never personally seen an organization that used the political and regulatory process to fight off competition more than that company. So, if that is not in writing that they would absolutely do that, I wouldn't take that as a consideration that they are going to be willing to do that. They might consider it. I have heard those kinds of stalls for years on all kinds of projects."

**KNEBEL** "Well, basically, our recommendation is based on the lack of documentation from the applicant that they cannot co-locate on the site. It is just like Southwestern Bell wouldn't provide written documentation to us, it is my understanding that they haven't provided the documentation to you, either, saying that you cannot co-locate at the site."

**LOPEZ** "When the permit was granted for Southwestern Bell, on the other tower, at that point in time, was part of the recommendation to build those towers to support co-location?"

**KROUT** "That is an old tower and I'm not sure the Zoning Code was in effect."

**GAROFALO** "Are there any other questions of staff? Okay, we will hear from Mr. Ferris."

**GREG FERRIS** "Thank you, Mr. Chair. I represent AT&T Wireless. I will not go into a long narrative on the issues that I have already discussed other than making points for the record on some of those issues.

First of all, there are two major issues, I think, here for denial. Let me address the proximity to residential first. Would you mind pulling up the slide of the aerial that shows this? You will see that the site will be over in an area that is somewhat buffered. I believe it is over here. You have trees and so it will be more buffered than it may appear. It is where the dot is. So, we believe that there will be some buffering. You will recall that the buffering of trees that currently exists is very important as well as, if you recall, there is very high-end residential. Millpond is a very high-end area that is in very close proximity to the tower near Central and Maize. We do not believe that this will be an impediment to development. The gentleman who owns the property is allowing us to lease on his ground and his property is subject to this development. He doesn't believe that it is an impediment to development; therefore, we find that staff has not shown any indication or proof that this indeed does hinder future residential development. The fact that some residences in the past have opposed or tried to keep towers out of their neighborhood does not mean that residences cannot be built in areas where there are towers. I think that is a false assumption and certainly is not grounds for denial of a Conditional Use.

There are two towers in question. I will address the Cellular One tower first that is approximately 1.1 mile to the south and east of this site. If you will look at the map that is coming around; it is a coverage map, you will see a large white space between our coverage area. If you will refer to your document you will see what it is like with it. This is where, if we move it to the Cell One site, it creates an enormous gap in our coverage and is unacceptable as a coverage for us to be able to service our customers. So the Cell One site is really not acceptable to us as a site. It is not acceptable because it does not meet the criteria or will not reach the areas that we need to reach to have continuous coverage.

Just real briefly, to describe what happens when you make a cell call. You are at one tower and your phone is working. There is a hand-off to the next tower. That is why you can drive down the road and your phone continues to work as you go. It hands off from tower to tower. If you have those areas where there are white spaces, or even some red spaces as you go down the road, it will not hand off those calls and you lose them. This is unacceptable to the consumer. It would be unacceptable to you, it is unacceptable to me. You also cannot initiate calls from those areas. More importantly is that issue of a Southwestern Bell tower. The Southwestern Bell tower is the tower that we designed our site around. We intended to use the Southwestern

Bell tower. That was our first choice. We have the leasing agent here if you would like to visit with him and ask him about his contacts. We spent weeks trying to get Southwestern Bell to allow us to go onto that tower.

They have told him, and he can give you names, the months they occurred, the conversations, where they told him that he could not go on that tower. We have asked them for that in writing, but Mr. Marnell correctly identified that AT&T will be a competitor of Southwestern Bell. Anything they can do not to allow us to go forward, it is in their interest not to do that. We will continue to try and get a letter that says 'you cannot go on that tower'. We will continue to try that. We actually were promised that letter before today because as of last week, after I spoke with Scott, and he told me that Southwestern Bell has reconsidered, we called them. We really have no interest in building a new tower if we can rebuild their tower. There are a couple of issues there with their tower though. It is a switch station for them. It is a very important part of their link. They are not interested in messing around with that at all. It is overloaded. That is the reason we can't go on that tower. We would have to rebuild the tower. It is not structurally sound as it stands today. But we are willing to rebuild that tower and at the time we come for a building permit, Mr. Krout will pick up the phone and call Southwestern Bell and ask if we can go on their tower, and if Mr. Krout will identify the individual that tells me we can go on that tower, we will switch over and rebuild their tower. But to tell us that they will reconsider whether or not we can go on that, or they are willing to negotiate with us, I think that at that time, Mr. Krout should ask for a letter in writing that we can go on that tower so that we can have that in hand when we go.

So, again, we don't believe that it is necessary for you to deny this Conditional Use permit based on an occurrence that you will have an opportunity from your staff's position to document in the future to check and make sure that we are not violating not only the Code itself, but the spirit of the Code. We had no intention of doing either on either case. So, we believe that those two issues are not issues for denial and should not be considered. Again, we concur with the findings of staff for approval, with the exception of the time frame, and that is in writing, and that can be part of the record. I don't know that I need to go into great detail.

Also, the issue of that you don't design a monopole to collapse upon itself so we would ask that item D be removed and Item H, for the issues that are stated there and those can be part of the record as to why we are not in favor of dual poles. We have absolutely no problem whatsoever with the 120-foot requirement. We will accept that. It is not our first choice, but we have determined that this will be acceptable to us in the spirit of cooperation with staff. We also will be able to make this such. Are you really sure, Marvin, that you want us to be able to rebuild this to 150 feet? Because it is kind of an engineering issue. We would rather not, but if you are insistent upon this, it is 120 foot already. You are denying 150 feet. We will build it to 150 foot now, if you want. That would be much easier than trying to design a pole because there is a difference between building a pole that is 120 foot tall. I can understand on the 100-footer and the 90-footer, but are you sure you really want us to design this to a 30-foot extension. If not, would you remove your objection for the 150-foot as it stands?"

**KROUT** "Will it make any difference, in terms of the diameter of the tower?"

**FERRIS** "Yes, it will. Absolutely."

**GINO STYMAN** "I am the construction manager with Divine. The difference in diameter would be approximately moving it from a 36 inch base to about a 48-60 inch space."

**KROUT** "I say that because that is a large part of why the Cellular One tower in Carriage Park, I think, got some criticisms. It was built 120 feet but with the ability to extend to 150 feet and it has got to be 5 feet in base."

**FERRIS** "Yeah. And we are willing to do that, but we are also willing for you to not have that as part of the recommendation. That really is up to you as staff and to the Planning Commission. Are you really sure that is what you want? We have no problem with the landscaping, and it really is for the fence and the equipment on the base. We have no problem with that."

**KROUT** "Thanks for giving us the opportunity. I think I said that I would withdraw it, but you still have, at least under the current Code, the ability for someone to come to AT&T in the future and say they want to rebuild a 150-foot tower on this site, and will AT&T work with them."

**FERRIS** "And they also could co-locate on a 120-foot tower. We will build these for co-location."

**KROUT** "Right. So I think, in retrospect, having seen Cellular One's tower and what the impact is, I would suggest to you that you would delete Condition G about the 120-foot tower, for now."

**GAROFALO** "Are there any other questions of Mr. Ferris or AT&T? Okay. Is there anyone here to speak in opposition to this Conditional Use permit? Seeing none, we will take it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: All of the land adjacent to the site is currently zoned SF-20. The character of the land is primarily suburban, with single family residences located as close as 300 feet to the north of the site and hundreds of existing residences within sight distance of the proposed structure. Urban development of single family residences is rapidly approaching from the north and west. Commercial communications towers of 150 feet in height do not fit within the character of a residential neighborhood, and substantial residential development is likely to occur around this site within the next 10 years, as indicated by the update for the Comprehensive Plan, now in progress. The suitability of the subject property for the uses

to which it has been restricted: The site is zoned SF-20, Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed, and constructing the tower likely will hinder the development of single family residences in and around the site due to the negative visual impact of the tower. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located approximately 300 feet north of the site, with hundreds of existing residences within sight distance of the proposed structure. A 150 foot monopole constructed this close to existing residences could negatively impact property values due to the negative visual impact of the tower. In addition, much of the land around the site is undeveloped but in the path of rapid urban development. The negative visual impact of the monopole could detrimentally affect the suitability of surrounding property for future development. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. In this case, options are apparently available to provide cellular phone service to this area at a reasonable cost by co-locating at one of two existing tower sites. The applicant has not successfully demonstrated that these co-location options have been fully explored as required by Section III.D.6.g. of the Unified Zoning Code. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The support structure shall be a "monopole" design, and the monopole shall
3. Be located as indicated on the site plan
4. The color of the monopole shall be silver or gray or a similar unobtrusive color.
5. There shall be no lighting of or on the monopole.
6. The monopole shall not exceed 120 feet in height to lessen its negative visual impact.
7. A landscape plan shall be submitted for approval by the Director of Planning which provides densely planted evergreen trees around the chain link enclosure to lessen the negative visual impact of the monopole.

**MARNELL** moved, **WARNER** seconded the motion, and it carried unanimously (13-0).

- 
24. **Case No. CU-546** – Charles and Mary Starks (owner/applicant); Divine Towers International and Ferris Consulting (agents) request a Conditional Use to permit a commercial communication tower on property described as:

NE/4 Sec 25-27-2E, Sedgwick County, Kansas, Except Beg. NE Corner, W 2637' to NW Corner NE/4, S along W Line of NE/4 98.5', E to Point on E Line, N 94.9' to Beg., & Except 159<sup>th</sup> Street on E and ELY 1/4 Mile Lincoln Street on S. Generally located approximately 334 feet west of 159<sup>th</sup> Street East and 178 feet north of Lincoln.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 150-foot commercial communications monopole for use by AT&T Wireless Services. The monopole will be sited on a 2,500 square foot area located approximately 334 feet west of 159<sup>th</sup> Street East and 178 feet north of Lincoln. The site is in the 100-year flood plain of Spring Branch Tributary No. 4. Access to the site is to be from Lincoln. The applicant's site plan (attached) depicts a 50-foot by 50-foot compound enclosed by a chain link fence. Within the enclosure would be the monopole and an equipment shelter. The monopole would be constructed so as to be able to accommodate up to three carriers.

The applicant's justification for the request (attached) indicates this site is necessary for AT&T Wireless Services to provide continuous coverage east of the city along Kellogg and I-35. The closest existing towers are 1.9 miles, 2.0 miles, and 2.5 miles away, and AT&T Wireless Services is also co-locating on the tower that is 2.5 miles away. Since this is a developing area, there are not any buildings of sufficient height which might provide alternative support structures on which to locate antennas. According to a letter from an aviation consultant, this site complies with the Federal Aviation Administration hazard standards, and should not be a hazard for aircraft.

The nearest developed property to the site is located approximately 400 feet to the east. The property to the east is a single-family residence located in Butler County. Located approximately 1,000 feet to the west are numerous single family residences which are zoned "SF-6" and platted as the Timber Lakes Estates 3<sup>rd</sup> Addition. The property to the south is zoned "SF-20",

owned by Sedgwick County as a part of the Four-Mile Creek sewer plant, and currently used for agriculture and a sewage treatment plant. The property north of the site is zoned "SF-20", owned by the applicant, and is used for agriculture.

There currently is a commercial communication tower study ongoing by the city and county. That study is focusing on possible alternatives to the construction of new tower structures. When complete, the study will likely recommend consideration of alternatives to constructing a 150-foot tower in a developing residential area as the applicant has proposed. These alternatives may include constructing greater numbers of shorter structures to provide wireless phone service in residential areas. This application was reviewed by a professional radio frequency engineer consulting with planning staff, and the engineer recommended that AT&T Wireless Services demonstrate why they cannot co-locate their antennas on an existing tower located 1.9 miles to the northwest rather than construct a new monopole (report attached). While not noted in the engineer's report, the application showed radio frequency plots for a tower of 100 feet and 150 feet, and based on the differences between those two plots a 120 foot monopole at this location would seem to provide adequate coverage.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Agriculture  
SOUTH: "SF-20" Agriculture and sewer treatment plant  
EAST: Butler Co. Single family residences  
WEST: "SF-6" Single family residences

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to Lincoln, a two-lane township road with no available traffic volumes.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as "Low Density Residential" (1 to 6 dwelling units per acre), and the update for the Plan, now in progress, shows this area as appropriate for urbanization in the next 10 years. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g. of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication towers.

**RECOMMENDATION:** Given the location of the monopole within approximately 400 feet of existing residential properties and the 150 foot height of monopole, the monopole will have a negative visual impact on neighboring properties and hinder the development of surrounding property for residential purposes. A more suitable location for a 150-foot monopole is along Kellogg on property identified in the Land Use Guide as appropriate for "Commercial" development, or further east in Butler County. Sufficient vacant property meeting this description is available. In addition, an option for co-location rather than new tower construction is apparently available, and according to planning staff's radio frequency engineering consultant, the applicant has not successfully demonstrated that these co-location options have been fully explored, as required by Section III.D.6.g. of the Unified Zoning Code. Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED. However, if in the opinion of the Planning Commission the application should be approved, planning staff recommends that the approval be subject to the following conditions, which are intended to preserve the option to either raise or lower the height of the monopole in the future, and to minimize the visual impact.

1. The Conditional Use shall be in effect for 5 years from the date of final approval. The applicant shall submit an application for extension of the Conditional Use if the use needs to be extended beyond the 5-year period.
2. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
3. The support structure shall be a "monopole" design, and the monopole shall be located as indicated on the site plan
4. The color of the monopole shall be silver or gray or a similar unobtrusive color.
5. There shall be no lighting of or on the monopole.
5. The monopole shall not exceed 120 feet in height to lessen its negative visual impact.
7. The antenna shall be placed as close as possible to the monopole, utilizing the "dual polarization" or similar method.
8. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet.
9. A landscape plan shall be submitted for approval by the Director of Planning, which provides densely planted evergreen trees around the chain link enclosure to lessen the negative visual impact of the monopole.
10. The applicant shall submit for approval by the County Engineer that demonstrates how the site will be removed from the 100-year flood plain.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All of the land adjacent to the site is currently zoned SF-20 or SF-6. The character of the land is primarily suburban, with single family residences located as close as 400 feet to the east of the site and dozens of existing residences within sight distance of the proposed structure. Urban development of single family residences is rapidly approaching from the north and west. Commercial communications towers of 150 feet in height do not fit within the character of a residential neighborhood, and substantial residential development is likely to occur around this site within the next 10 years, as indicated by the update for the Comprehensive Plan, now in progress. Sufficient land is available to the north along Kellogg, which is

identified in the Land Use Guide as appropriate for commercial development, as a more suitable location for the 150-foot monopole.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-20, Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed, and constructing the tower likely will hinder the development of single family residences in and around the site due to the negative visual impact of the tower.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located approximately 400 feet east of the site, with dozens of existing residences within sight distance of the proposed structure. A 150 foot monopole constructed this close to existing residences could negatively impact property values due to the negative visual impact of the tower. In addition, much of the land around the site is undeveloped but in the path of rapid urban development. The negative visual impact of the monopole could detrimentally affect the suitability of surrounding property for future development.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. In this case, an option is apparently available to provide cellular phone service to this area at a reasonable cost by co-locating at an existing tower site. The applicant has not successfully demonstrated that these co-location options have been fully explored as required by Section III.D.6.g. of the Unified Zoning Code. In addition, the Land Use Guide of the Comprehensive Plan identifies land to north of this site along Kellogg as appropriate for commercial development, and this is a more suitable location for a 150 foot monopole.
5. Impact of the proposed development on community facilities: No impacts have been identified, as municipally supplied services are not required.

**KNEBEL** "The applicant has requested that this item be deferred to January 13<sup>th</sup>. You have contacted all of the owners in the notification area and I don't believe anybody is here to speak on that item."

**MOTION:** That the item be deferred to the January 13, 2000 MAPC meeting.

**GAROFALO** moved, **LOPEZ** seconded the motion, and it carried unanimously (13-0).

-----

25. **CU-544** – Judy and Sam Eberly (owner/applicant); Divine Towers International and Ferris Consulting (agents) request a Conditional Use permit to permit a commercial communication tower on property described as:

That part of the northwest quarter of Section 12, Township 27 south, Range 2 west of the sixth Principal Meridian, Sedgwick County, Kansas, being more particularly described as follows:

Commencing at the northwest corner of said northwest quarter; thence N88 degrees 06'33" East along the north line of said northwest quarter, a distance of 1769.30 feet; thence south 01 degrees 53'27" east a distance of 2440.30 feet to the point of beginning; thence south 36 degrees 14'20" East a distance of 30.00 feet; thence south 53 degrees 45'40" west a distance of 30 feet; thence north 36 degrees 14'20" West a distance of 30 feet; thence north 53 degrees 45'40" east a distance of 30 feet to the point of beginning. Generally located approximately 1/2 mile south of 21<sup>st</sup> Street North and 1/3 mile east of 135<sup>th</sup> Street West.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 90-foot commercial communications monopole for use by AT&T Wireless Services. The monopole will be sited on a 900 square foot area located approximately ½ mile south of 21<sup>st</sup> Street North and 1/3 mile east of 135<sup>th</sup> Street West. The site is west of the Cowskin Creek flood plain. Access to the site is to be from 21<sup>st</sup> Street North. The applicant's site plan (attached) depicts a 30-foot by 30-foot compound enclosed by a chain link fence. Within the enclosure would be the monopole and an equipment shelter. The monopole would be constructed so as to be able to accommodate up to three other carriers.

The applicant's justification for the request (attached) indicates this site is necessary for AT&T Wireless Services to provide continuous coverage west of the city. The closest existing towers are 2.2 miles and 2.5 miles away, and AT&T Wireless Services is also co-locating on those towers. Since this is a largely undeveloped area, there are not any buildings of sufficient height which might provide alternative support structures on which to locate antennas. The 90-foot height is needed to achieve coverage targets. According to a letter from an aviation consultant, this site complies with the Federal Aviation Administration hazard standards, and should not be a hazard for aircraft.

The site is entirely surrounded by undeveloped property. The nearest developed properties are large-lot residential properties located approximately ¼ mile to the west. Eberly Farm, a recreational facility owned by the applicant, is located approximately ¼ mile to the north. Residentially developed properties to the east and south are over ¼ mile away and are buffered by dense

tree cover along the banks of the Cowskin Creek. All properties in the vicinity of the site are zoned "SF-20" Single Family Residential.

There currently is a commercial communication tower study ongoing by the city and county. That study is focusing on possible alternatives to the construction of new tower structures. Due to the undeveloped nature of the property in the vicinity of this site, none of the study's alternatives to new towers is likely to be applicable in this case. This application was reviewed by a professional radio frequency engineer consulting with planning staff, and the engineer recommended approval of the application based radio frequency engineering considerations (report attached).

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Agriculture and recreational facility  
SOUTH: "SF-20" Agriculture and large-lot residential properties  
EAST: "SF-20" Agriculture and large-lot residential properties  
WEST: "SF-20" Agriculture and large-lot residential properties

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to 21<sup>st</sup> Street North, a two-lane arterial that carried, in 1996, approximately 4,000 vehicles per day.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as "Low Density Residential." The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g. of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication towers.

**RECOMMENDATION:** Because of the location of this monopole, distant from any major streets or other development, and in the trees, it should have little visual impact. However, this area is in the path of growth and will be more visible in the future. Therefore, planning staff recommends: (1) the use of a less visible antenna array, which our radio frequency engineer indicates in most cases should be workable, and (2) a time period for this approval, so that in the future, if and when there is a need for more facilities to meet "capacity" needs in this area, there can be consideration to reducing the height of this structure. Also, to keep all options open, planning staff is recommending that the monopole be designed and built to easily extend another 30 feet in height for some prospective user(s). Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

6. The Conditional Use shall be in effect for 5 years from the date of final approval. The applicant shall submit an application for extension of the Conditional Use if the use needs to be extended beyond the 5 year period.
7. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
8. The support structure shall be a "monopole" design, and the monopole shall be located as indicated on the site plan
9. The monopole placed on the site shall be designed and constructed, and certified by a registered engineer, such that if it collapses, it will fall within the area on which the tower is located.
10. Removal of existing trees in and around the site shall be limited to the access easement and a 35-foot by 35-foot area around the monopole. All removed trees shall be replaced with a like number of new trees.
11. The color of the monopole shall be silver or gray or a similar unobtrusive color.
12. There shall be no lighting of or on the monopole.
13. The monopole shall not exceed 90 feet in height.
14. The antenna shall be placed as close as possible to the monopole, utilizing the "dual polarization" or similar method.
15. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** All of the land adjacent to the site is currently undeveloped and zoned SF-20. The character of the land is primarily rural, but with urban development approaching from the south and east.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-20, Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The site is currently undeveloped. The closest developed properties are located approximately ¼ mile west and north of the site. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the changes nearby property will experience when this site begins development. The only impact to be noted at the time this report was prepared is the visual impact of a 90-foot monopole.



4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost.
5. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.

**KNEBEL** "This is the last in our string of cellular towers. Since there are no towers in this area, and this area is well shielded by the Cowskin Creek and the vegetation that surrounds it from existing residential and also probably any potential residential that may occur. The only residential it might impact is future residential development on that parcel (indicating). Staff has recommended that this application be approved, based on the comments that are the same as what has been discussed on the past cases."

**GAROFALO** "Are there any questions of Scott? No questions, so we will hear from the applicant."

**GREG FERRIS** "I represent AT&T Wireless. This is the last of our cases. I thank you for your indulgence. Again, we concur with staff. We believe this is a good site. It is well shielded in trees and we concur with all of their recommendations with the same exceptions that we have had on the other two cases. You have a handout of why we oppose the time limitations, which is Item A and also Item I is in writing on the dual polarization issue. We also would object to Item D because we do not believe these poles should be built to collapse upon themselves. That is a conflict of what they are designed to do. I won't spend a great deal of time on this because I know that you are anxious to go home. I would be glad to answer any questions."

**GAROFALO** "Are there any questions for Mr. Ferris?"

**WARREN** "What about Item H, is that a problem?"

**FERRIS** "We are agreeing to 90 foot. That is what our submittal was for, and since this is a smaller pole, you may want to keep the 30 foot extension ability on that pole. We have no problem with that, either. It is a little different than a 120 footer, and this is in the trees."

**MARNELL** "This 90 foot will accept the 30 foot? It is the same size base?"

**GINO STYMEN** "I am with Divine Construction. The tower is designed to the 120-foot and we actually locate down on the tower. So the tower will be in one piece and designed that way."

**GAROFALO** "Are there any other questions? Okay. Let me ask if there is anyone here to speak in opposition to this agenda item, No. 25? Seeing none, we will take it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: All of the land adjacent to the site is currently undeveloped and zoned SF-20. The character of the land is primarily rural, but with urban development approaching from the south and east. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-20, Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located approximately ¼ mile west and north of the site. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the changes nearby property will experience when this site begins development. The only impact to be noted at the time this report was prepared is the visual impact of a 90-foot monopole. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The support structure shall be a "monopole" design, and the monopole shall be located as indicated on the site plan.
3. Removal of existing trees in and around the site shall be limited to the access easement and a 35-foot by 35-foot area around the monopole. All removed trees shall be replaced with a like number of new trees.
4. The color of the monopole shall be silver or gray or a similar unobtrusive color.
5. There shall be no lighting of or on the monopole.

6. The monopole shall not exceed 90 feet in height.
7. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet.

**LOPEZ** moved, **CARRAHER** seconded the motion, and it carried unanimously. (12-0).

**KROUT** "That decision is final unless the Planning Director appeals to the County Commission or unless the County Commission decides that they want to refuse one or all of these cases, or unless there is a protest."

-----

**Other Matters**

**KROUT** "I just want to remind you, Commissioners, that your next meeting is the workshop next Tuesday at 2:00 p.m. on December 21. Hopefully that will be the final workshop on the Comprehensive Plan before you have public hearings again."

**GAROFALO** "Have we set the dates for the public hearings?"

**KROUT** "We have tentatively set those dates and that will be part of a mailout that you will be getting. We will hand it out again Tuesday, but they will be the latter part of January."

**MCKAY** "I would like to say one thing. I am glad that we started at 10 o'clock and are getting through at 4:00 rather than starting at 1:30 and getting through at 7:30."

**KROUT** "That's right."

-----

**MOTION:** That the Metropolitan Area Planning Commission be adjourned.

**CARRAHER** moved, **BARFIELD** seconded the motion, and it carried unanimously (12-0).

The meeting formally adjourned at 4:00 p.m.

State of Kansas        )  
Sedgwick County     ) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Marvin S. Krout, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)